

power to make arrangements for payment of the debt by some means short of an absolute sale of the land. The point is one on which we should be glad of opinions from those who have been led to study it. It will be remembered that, in section 272, we propose to give power to the Executive to make special rules on the subject of sales of land.

Section 277.—Connected with this section is a point of considerable difficulty. The corresponding section of the Code, namely, section 249, directs that nothing is to be sold but the right, title and interest of the defendant in the property described as put up for sale. It would seem that the seller could not, if he wished, sell anything more specific. And it has been decided with reference to section 258 of the Code that if the judgment-creditor makes a mistake and puts up for sale the property of an entire stranger, and the purchaser concludes the purchase under that mistake, he cannot, when ousted by the true owner, recover his purchase-money, but that the judgment-creditor who has sold him nothing is entitled to keep the money. The combination of these two rules seems calculated to introduce a speculative character into execution-sales, which must be very damaging to the property sold. We understand that in fact it is very common for land to be sold at an undervalue at such sales. To avoid this mischief we have proposed two alterations. In this section, 277 of the present draft, we say that the best practicable description shall be given of the property to be sold. And in section 293, corresponding with section 258 of the Code, we say that the purchaser may recover his purchase-money if the property put up for sale is that of a stranger and he is ousted from it. We shall be glad to know of those who are familiar with the subject whether the fact really is that property is apt to be sold at an undervalue in execution-sales, and if so, to what cause they impute it, what they think of the alterations now proposed, and whether any remedy has occurred to them by which more security can be given to purchasers with the view of obtaining better prices for land.

In section 283, as to the confirmation of an execution-sale, for 'absolute,' we have substituted 'absolutely binding on the vendor.'

Section 287.—Where the purchaser fails to make the requisite deposit or to pay the balance of the purchase-money, we have provided that the deficiency of price (if any) on the re-sale, and the expenses of such re-sale, shall be certified to the Court, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules for the execution of money-decrees.

Section 288.—We have here provided (in accordance with the practice of the Court of Chancery) that the decree-holder shall not, except with the express permission of the Court, purchase the property sold in execution of his decree.

Sections 290, 291.—In case of irregular sales of moveables, we have provided that the person injured thereby may not only sue the person injuring him, but may also sue for the recovery of the specific property and for compensation in default of recovery. And in case of such sales of immoveable property, we have declared that the purchaser may apply to the Court to set aside the sale on the ground that the person whose interest in the property purported to be sold had no such interest (see 5 Bomb. O. C. J. 83).

Section 294.—We have re-drawn this section so as to make it clear that a certificate of sale of land is, for the purpose of the stamp-law, to be regarded as a conveyance.

Section 305.—We have here made some additions to the law as to payment out of assets in execution of a decree. We have declared that out of such assets—whether realised by sale or otherwise—the decree-holder on whose application the property was first attached is entitled to be first paid, provided that the attachment was in execution of a money-decree then capable of being completely executed (21 Suth. 66). We have expressly saved the rights of the Crown, and we have declared that if any of such assets be paid to a person not entitled to receive them, the rightful owner may compel a refund (9 Suth. 514). Where the judgment-debtor is declared an insolvent, the provisions as to priority contained in this and the following section will be overridden by the rules as to distribution prescribed by section 325.

Section 307.—When the Court finds, upon the application of the holder of a decree, that any other decree under which property has been attached was improperly obtained, we have, in addition to the powers given by section 432 of the Bill of 1865 (= section 272 of Act VIII), authorised the Court to stay the proceedings and refer the parties to a regular suit.

As to discharge from imprisonment under a decree, we have provided that a defendant once discharged shall not be re-arrested under that decree.

The most important alterations in this part of the Bill will be found in sections 314 to 328, corresponding with sections 433 to 436, and 444 to 450 of the Bill of 1865, and sections 273, 280, 281 of Act VIII and section 8 of Act XXIII of 1861. They provide an insolvent law for persons arrested or imprisoned in execution of money-decrees. The chief changes which we have made are these: (a) the Court (*i. e.*, the District Court or such other Court as the Local Government may invest with the powers of a District Court under these sections) may cause a copy of the would-be insolvent's application to be served, not merely on the decree-holder, but also on any other of his creditors; (b) the Court may also grant leave to any of the creditors to bring forward evidence to shew that the applicant is not entitled to be declared an insolvent; (c) the Court may declare the applicant an insolvent and appoint a Receiver in whom all the insolvent's property will vest (section 321); (d) the Receiver will then collect the assets, and on his certifying that the insolvent has done all in his power for that purpose,

the Court may discharge the latter. The Court will then frame a schedule of creditors and their respective debts (section 324). Creditors not mentioned in the schedule may apply to have their names inserted, and creditors mentioned therein may apply to have the schedule altered; and the Receiver will, under the direction of the Court, convert the assets, discharge any debts or fines due by the insolvent to the Crown, distribute the balance rateably among the scheduled creditors without any preference, and pay the surplus (if any) to the insolvent.

As to the effect of the discharge, we have made no substantial change, except that the insolvent will not be liable to be arrested or imprisoned on account of *any of the scheduled debts*, not merely (as provided by section 449 of the Bill of 1865) on account of the decree under which he was imprisoned, and that his property shall be liable to attachment until the decrees against him held by the scheduled creditors either are fully satisfied or become by lapse of time incapable of being executed.

We have considered whether it would be desirable to extend the law so as to enable a person not arrested or imprisoned in execution of a decree to apply to be declared an insolvent. But, on the whole, we think that this change would be too great for the machinery at present available in many parts of India.

Section 331.—We have here provided for the execution of Mofussil decrees within the Presidency Towns.

PART II.—OF INCIDENTAL PROCEEDINGS.

The second Part of our draft deals with the incidental proceedings which take place (a) on the death, marriage or insolvency of parties to a suit; (b) on the withdrawal and adjustment of suits; (c) on payment into Court; (d) on requiring security for costs; (e) on setting aside decrees by default and *ex parte*, and (f) on the issue of commissions.

CHAPTER XIX.—OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

Section 358.—We have here inserted an explanation to shew that a certificate of heirship, or a certificate to collect debts, does not of itself constitute the holder the legal representative of the deceased.

CHAPTER XX.—OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

Section 364.—We have limited the power of the Court to permit withdrawal with liberty to sue again, to cases when the suit must fail by reason of some formal defect; and we have declared that nothing in this section shall authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

CHAPTER XXI.—OF PAYMENT INTO COURT.

Section 368.—We have here altered the Bill of 1865 in accordance with the following views:—If the plaintiff accept the amount paid-in only as satisfaction in part of his claim, he may prosecute his suit for the balance; but if the Court decides that the payment has been a full satisfaction, the plaintiff should pay the costs of the suit. If, however, the plaintiff accepts the amount as satisfaction in full, the Court should pass judgment accordingly; and in awarding costs it should consider which of the parties is most to blame for the litigation.

CHAPTER XXII.—OF REQUIRING SECURITY FOR COSTS.

We have made no change in this chapter, which corresponds with sections 63 and 64 of the Bill of 1865, sections 34 and 35 of Act VIII of 1859.

CHAPTER XXIII.—OF SETTING ASIDE DECREES BY DEFAULT AND EX PARTE.

This chapter corresponds with sections 172 to 175 of the Bill of 1865, section 119 of Act VIII of 1859. Here, too, we have made no change.

CHAPTER XXIV.—OF COMMISSIONS.

This chapter deals with (a) commissions to examine witnesses; (b) commissions for local investigations; (c) commissions to investigate accounts, and (d) general provisions applicable to all such commissions. Under (a) we have inserted a section (385) to provide for the case of the witness being in jail, and under (d) we have declared that the commissioner shall take down all questions and answers and make a note of the objections (if any) to the admissibility of evidence. We have made no other substantial change.

PART III.—OF SUITS IN PARTICULAR CASES.

Part III deals with suits in particular cases, and herein with (a) suits by paupers; (b) suits by or against Government or Government servants; (c) suits by or against Native or foreign rulers; (d) suits by or against corporations and companies; (e) suits by and against trustees, executors and administrators; (f) suits by or against minors and persons of unsound mind; (g) suits by infirm persons and women; (h) suits by or against military men; (i) suits by stakeholders, otherwise called interpleader-suits.

CHAPTER XXV.—SUITS BY PAUPERS.

The principal additions which we have here made are as follows:—We have provided that the Court shall hear any argument which the parties may desire to offer on the question

whether, on the face of the petition and the evidence, the petitioner is or is not disqualified from suing as a pauper. We have declared that the pauper shall not be exempt from paying (a) the expense of serving process, (b) the expenses of witnesses, (c) the duty and penalty payable on unstamped or insufficiently stamped instruments which he produces; and we think that, if he resides out of British India, he should not be exempt from giving security for costs. We have provided that if he succeeds he shall have such costs as the Court thinks fit, and that if he fails the Court may order him to pay costs to the defendant, and further, if the suit is frivolous or vexatious, punish him with a small fine and a month's imprisonment. Lastly, we have introduced a section (411) as to dispaupering, a subject ignored both by the Bill of 1865 and by Act VIII of 1859.

CHAPTER XXVI.—SUITS BY OR AGAINST GOVERNMENT OR GOVERNMENT SERVANTS.

The only change that we have here made is in section 427 (= section 334 of the Bill of 1865). We think that, where the officer against whom execution of a decree against Government is applied for neglects to satisfy the decree, the Court, whether it be the High Court or subordinate thereto, should report directly to the Local Government; and we think that the period after which execution may issue on such unsatisfied decree should be computed from the date on which the report reaches Government.

CHAPTER XXVII.—SUITS BY OR AGAINST NATIVE AND FOREIGN RULERS.

CHAPTER XXVIII.—SUITS BY OR AGAINST CORPORATIONS AND COMPANIES.

In neither of these chapters have we made any change calling for notice.

CHAPTER XXIX.—SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Section 431.—We have here somewhat modified the provisions as to executors, administrators and trustees, found in section 9 of the Bill of 1865. We have provided that, in all suits concerning property vested in a trustee, &c., he shall represent the beneficiaries, and that, unless the Court otherwise direct, they need not be made parties.

Where there are several executors or administrators, we have provided, in accordance with the practice of the Court of Chancery, that (except in the case of executors who have not proved as executors, and administrators who are beyond the local limits of the jurisdiction) they must all be made parties to a suit against one or more of them.

We have also provided that, unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXX.—SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

We have substituted this chapter (which is substantially taken from the rules of the High Court at Fort William, dated 10th June 1874) for the somewhat meagre section (40) of the Bill of 1865, relating to suits by or against infants. The persons of unsound mind to whom it applies (section 462) do not include those who have been found so by inquisition.

CHAPTER XXXI.—SUITS BY INFIRM PERSONS AND WOMEN.

We have made no change here.

CHAPTER XXXII.—SUITS BY AND AGAINST MILITARY MEN.

The only addition here made is an explanation of the term 'commanding officer' used in section 464 (= section 37 of the Bill of 1865, section 19 of Act VIII of 1859). In this we have followed the Indian Articles of War, Act V of 1869.

CHAPTER XXXIII.—INTERPLEADER.

This chapter is altogether new. It shows, section 469, when an interpleader suit may be instituted; section 470, what the plaint should state; section 471, when the thing claimed should be paid into Court; section 472, the procedure at the first hearing; section 473, when tenants or agents may compel their landlords or principals to interplead; section 474, how the plaintiff's costs may be secured, and lastly, section 475, the procedure where a defendant in an interpleader suit is actually suing the stakeholder in another suit. We trust that this chapter will prove an efficient substitute for Act VIII of 1841, which, accordingly, we propose to repeal.

PART IV.—PROVISIONAL REMEDIES.

By these we mean (a) arrest before judgment; (b) attachment before judgment; (c) temporary injunctions; (d) appointment of Receivers and Managers.

CHAPTER XXXIV.—OF ARREST BEFORE JUDGMENT.

CHAPTER XXXV.—OF ATTACHMENT BEFORE JUDGMENT.

We have left these provisions substantially untouched.

CHAPTER XXXVI.—OF TEMPORARY INJUNCTIONS.

This chapter deals only with temporary, or, as they are sometimes called, provisional, injunctions. The subject of perpetual injunctions will more fitly be dealt with by a Bill relating to specific and preventive relief.

We have here inserted a section (495) to authorise the issue of temporary injunctions to restrain fraudulent removals of property pending a suit. We have provided (section 497) that, in all cases except those of great urgency, the Court shall, before granting an injunction, direct notice of the application for the same to be given to the opposite party. And we have declared (section 498) that an injunction directed to a corporation shall be binding on all its members and officers whose personal action it seeks to restrain.

CHAPTER XXXVII.—APPOINTMENT OF RECEIVERS AND MANAGERS.

To this chapter we have added a section providing that, when the subject-matter of a suit is capable of delivery, and any party admits that he holds it as a trustee for another party, or that it belongs to another party, the Court may order it to be deposited in Court, or delivered to the latter.

PART V.—SPECIAL PROCEEDINGS.

Part V treats of the following special proceedings, namely, (a) reference to arbitration; (b) proceedings on agreement of parties; (c) summary proceedings on negotiable instruments.

CHAPTER XXXVIII.—REFERENCE TO ARBITRATION.

The only substantial changes which we have made are in section 507, where we have provided that, when once a matter is referred, the Court shall not deal with it in the same suit unless the reference be fruitless, in which case the Court may supersede the arbitration and restore the suit to the file; in section 508, where we have struck out the reference to an uneven number of arbitrators, and in section 520, where we have declared that an award remitted for reconsideration becomes void on the arbitrators' refusal to reconsider it, and that no award shall be valid unless made within the period allowed by the Court. In section 527 we have provided that the Court to which the application therein mentioned must be made shall be the Court of the lowest grade having jurisdiction over the whole matter to which the award relates.

CHAPTER XXXIX.—OF PROCEEDINGS ON AGREEMENT OF PARTIES.

In section 531 we have provided that every such agreement shall be filed in the Court of the lowest grade having jurisdiction in the matter to which it relates. We have made no other change.

CHAPTER XL.—OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

This corresponds with Act V of 1866, ss. 2—8. We have made only a few formal changes therein.

PART VI.—OF APPEALS.

Part VI treats of Appeals. We first declare (s. 541) that, except as provided by the Code or by some other law for the time being in force, no appeal shall lie, and we then deal (chapter XLII) with appeals from original decrees; (chapter XLIII) with appeals from appellate decrees; (chapter XLIV) with appeals from orders; (chapter XLV) with pauper appeals, and lastly (chapter XLVI) with appeals to the Queen in Council. It will have been observed that we have discarded the misleading terms 'regular appeals' and 'special appeals.'

CHAPTER XII.—BAR OF APPEALS NOT EXPRESSLY PERMITTED.

We have already mentioned this chapter, which corresponds with section 622 of the Bill of 1865.

CHAPTER XLII.—OF APPEALS FROM ORIGINAL DECREES.

Section 547.—We think that the Court should not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of meeting the appellant's case on that ground.

Section 557.—We have here provided that the Appellate Court shall not stay execution of a decree which has been appealed against, unless irreparable injury may result to the appellant, if execution is not stayed, and unless the application is made without unreasonable delay. We have further empowered the Court, if it grant the application, to impose terms on the appellant.

Section 571.—Where an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, we have here provided for his obtaining a re-hearing in case of his having been prevented by sufficient cause from attending when the appeal was called on.

When the respondent gives notice of any objection to the decree which he might have taken by way of appeal, we have restricted him to raising questions between himself and the appellant. He should not, we think, be allowed to raise questions between himself and any other respondent or defendant.

In the section (578) relating to remand by an Appellate Court, we have provided that the Court of first instance may be directed, not only to investigate the suit on the whole merits, but also to try a particular issue, or to take certain specified evidence. When a case is remanded for the purpose of taking certain specified evidence, we think that the Court to which the case is remanded should take no other evidence in the case.

Section 575.—We have here provided for the re-settlement by the Appellate Court of defective issues.

Section 578.—When the Appellate Court frames issues and refers them for trial to the Court of first instance, we think that it should also have power to prescribe the manner in which the additional evidence should be taken and the points to which it should be confined.

Section 587.—When the decree appealed against is reversed, we have declared (in accordance with Sir B. Peacock's ruling in *P. Beng. A. C. 50*) that the judgment of the Appellate Court shall state the relief to which the appellant is entitled.

Section 589.—Where the appeal is heard by two Judges, who differ in opinion on a point of law, we think that they should confer together, and that the case should be re-argued upon that point before one or more of the other Judges, and determined according to the opinion of the majority of the Judges before whom the point is argued, including the Judges who first heard the appeal. We have altered to this effect the corresponding section (533) of the Bill of 1865 (= Act XXIII of 1861, section 23). Where the appeal is heard by more Judges than two, if their opinions are equally divided, we think (section 590) that the decree appealed from should be taken as affirmed, and that there should be no reference to the opinion of the senior Judge.

CHAPTER XLIII.—OF APPEALS FROM APPELLATE DECREES.

In view of the discussion which is pending on this subject, we have not thought it prudent to introduce any changes of principle here. But we wish to express our opinion that the effects of the present law are by no means satisfactory, because frivolous cases are thereby admitted to second appeal, important ones are excluded from it, and the High Courts are fettered by rigid rules in dealing with the cases which come up to them. We think it would be desirable to classify the suits which are admitted to second appeal rather by their importance than by the accident of their involving some question of law or practice. This would be in accordance with the proposals made in the pending Civil Appeals Bill for Bengal. The point is one on which we should be glad to receive opinions from the local authorities.

The only change which we have here made is the introduction of a clause (608) providing for the case of a change of the pleader who has signed the certificate that the grounds of appeal are reasonable.

*CHAPTER XLIV.—OF APPEALS FROM ORDERS.

We have added to the list of appealable orders those made under section 17 for staying proceedings in a suit, orders made under section 111 or 112 where a party refuses to answer a question put by the Court or fails to appear, orders in insolvency-matters, orders as to paupers under section 409, and orders as to interpleader-suits.

CHAPTER XLV.—OF PAUPER APPEALS.

Here our changes have been merely formal.

CHAPTER XLVI.—OF APPEALS TO THE QUEEN IN COUNCIL.

This chapter reproduces the provisions of the recently passed Act VI of 1874, which the Bill proposes to repeal.

PART VII.—OF REVIEWS OF JUDGMENT.

Part VII deals with reviews of judgment. We think that the evidence on the discovery of which a review is obtainable should be, not only 'new,' but 'important' (7 *Suth.*, 166); and strict proof should be given that such evidence was not within the applicant's knowledge (9 *Beng.* 187). We have made provisions to this effect in sections 644 and 648. We have declared (a) that a party who is not appealing may apply for a review notwithstanding the pendency of an appeal by some other party, (b) that a person who has preferred an appeal may abandon it and apply for a review, and (c) that, except on the discovery of such new evidence as aforesaid, application for a review of a judgment (other than that of a High Court) should be made to the Judge who delivered it.

PART VIII.—OF REFERENCE TO THE HIGH COURT.

No change requiring notice has been made in this part of the Bill.

PART IX.—SPECIAL RULES AS TO HIGH COURTS.

Part IX contains some special rules relating to the High Courts established under 24 & 25 *Vic.*, cap. 104.

In section 664 we have introduced words to shew that such a Court may try suits in which any material part of the cause of action has arisen or any of the defendants dwells, &c., within the local limits of its ordinary original civil jurisdiction. We have also made it clear that the High Court has jurisdiction to entertain suits for land whether the land is situate wholly, or only in part, within the local limits. This is in accordance with the decision of the late Mr. Justice Norman in 3 *Bengal O. C.* 85, and with that of Mr. Justice Phear in 6 *Bengal* 686. The language of the charter of 1865, section 12, had given rise to some doubts on the subject.

In sections 682, 683 and 684 we have embodied the existing Rules of the High Courts at Fort William as to procedure in Admiralty, Testamentary and Intestate cases.

PART X.—MISCELLANEOUS.

Part X contains various miscellaneous provisions. In the sections (692—695) relating to exemption from personal appearances in Court, we have declared that *parda-nashins* shall not be exempted from arrest in execution of civil process, and that when any person exempted from personal appearance claims his privilege, and it is consequently necessary to examine him by commission, he must pay the costs of that commission.

Of the four schedules, the first specifies the enactments proposed for repeal; the second, the sections of the proposed Code which will be applicable (a) to Mofussil Courts of Small Causes, (b) to Revenue Courts; the third mentions certain Bombay enactments which it is desirable not to affect; the fourth contains 178 forms, (a) plaints for breach of contract, (b) plaints for damages upon wrongs, (c) plaints in suits for special relief, (d) forms of summonses, (e) forms of registers of suits, memoranda, decrees, orders, notices, warrants, and certificates. Some of these we have ourselves framed: others are taken (with some changes) from the Schedule to the County Court Orders in Equity, framed under the 28th & 29th Vic., c. 99, and from the volume of forms published by the Commissioners appointed to frame the revised New York Code; others from Act VIII of 1859, and the rest were framed by Mr. Broughton, late Recorder of Rangoon, and have stood the test of practice.

Having thus mentioned all the substantial additions which we have made to the Bill of 1865, we have now to specify the clauses of that Bill which we have struck out, with the reasons for each omission.

Clauses 11 and 12 provide that suits against Government (other than suits for land) shall be brought at the seat of Government. We think that such a provision would often cause great hardship to plaintiffs: and we have accordingly struck it out.

Eight clauses of the Bill of 1865, namely, 24 and 25, 133 and 134, 314, 315, 316 and 318, deal with the subject of specific performance of contracts. These relate to substantive law, and, if ultimately adopted, will come more fitly into the above-mentioned Bill relating to specific and preventive relief.

Clause 26.—This relates to declaratory suits, and is reserved for the same Bill.

Clause 61.—Procedure where there are several defendants, some of whom dwell without the jurisdiction. This is substantially provided for by sections 16, 17 and 18 of our draft, and it is unnecessary to make a separate provision.

Clause 65.—Procedure in a suit for immoveable property situate in different jurisdictions. This appears to be sufficiently provided for by sections 23, 24 and 25 of our draft (= sections 20, 21, 22 of the Bill of 1865).

Clause 120.—Procedure when defendant is about to leave India. This too seems to us fully provided for by our sections 476, 477, 478 (= sections 113, 114, 115 of the Bill of 1865).

Clause 146.—This relates to refunding half the stamp-duty on the plaint if the suit is compromised. The matter was considered and dealt with when the Court Fees Act, VII of 1870, was passed.

Clauses 193—196.—These also relate to stamp-duty, and the subject is sufficiently provided for by the Stamp Act, XVIII of 1869.

Clauses 243—254, and clause 594 relate to questions respecting religion or custom. We do not think it necessary or expedient to legislate specially regarding this matter. The Evidence Act, I of 1872, sections 13, 48 and 49, provides sufficiently for the solution of all such questions.

Clause 280 provides for the issue of a commission to examine witnesses who are neither within British India nor within an allied Native State. We think that this is sufficiently met by our section 382, which is equal to clause 279 of the Bill of 1865, and section 177 of Act VIII of 1859.

Clauses 281, 282, 283 provide for commissions to examine persons in jail. This is provided for by the Prisoners' Testimony Act, XV of 1869.

Clause 299 authorises the Court in certain cases to decide a suit on a sworn statement. Without giving any opinion on the policy of this provision, we would observe that the matter is sufficiently provided for by the Oaths Act, X of 1873, sections 8—12.

Clause 312 provides that a copy of every decree for the recovery of a portion of immoveable property with specified boundaries shall be sent to the District Registrar. The expediency of requiring the sending and registering of such copies was considered when the present Registration Act (VIII of 1871) was passed, and was decided against.

Clauses 468—482 relate to the summary enforcement of claims on registered bonds. The expediency of having any such provisions in the law was decided against by the legislature when the present Registration Act (VIII of 1871) was settled and passed, and nothing has since occurred to suggest that this decision should be reversed.

Clause 535 declares that if an appeal lies to a Court consisting of a single Judge, the appeal shall be heard and determined by such Judge. We have omitted this, as the matter is sufficiently provided for by our section 686 (= section 670 of the Bill of 1865).

Clause 536.—We have omitted the greater part of this clause as being provided for by the Limitation Act, IX of 1871.

From Under Secretary to Government of Bombay, No. 1409, dated 28th April 1866.
 Petition from Udeyram Sahukar of Muzaffarnagar.
 Endorsement Home Department, No. 3370, dated 3rd April 1867, forwarding Despatch from Secretary of State, No. 8, dated 25th February 1867, and enclosures.
 From Judge, Small Cause Court, Chuadanga, No. 18, dated 5th April 1867.
 Endorsement, Home Department, No. 601, dated 23rd May 1867, forwarding Despatch from Under Secretary of State, No. 15, dated 16th April 1867, and enclosure.
 Endorsement, Home Department, No. 816, dated 15th August 1868, forwarding letter from Government of Bombay, No. 2638, dated 10th July 1868, and enclosures.
 From Secretary to Government, Home Department, No. 1439, dated 19th August 1868, and enclosures.
 Endorsement, Home Department, No. 1647, dated 22nd September 1868, forwarding letter from Government of Bombay, No. 2585, dated 3rd September 1868, and enclosures.
 Endorsement, Home Department, No. 612, dated 12th May 1869, forwarding letter from Judicial Commissioner, Oudh, No. 21, dated 24th April 1869, and enclosures.
 From Acting Chief Secretary, Government of Madras, No. 21, dated 7th January 1870, and enclosures.
 " Government of Bombay, No. 4492, dated 19th November 1870, and enclosures.
 Office Memorandum, Home Department, No. 2245, dated 24th December 1870, and enclosures.
 Endorsement, Home Department, No. 1577, dated 5th September 1870, forwarding letter from Collier & Co., Solicitors, No. 4993, dated 19th August 1870, and enclosure.
 From Government, Fort St. George, No. 18, dated 9th February 1872, and enclosures.
 " Ditto ditto No. 1571, dated 5th December 1872, and enclosures.
 Office Memorandum, Home Department, No. 569, dated 19th March 1873, and enclosures.
 From Vinayakrao Hari Chand, Attorney, High Court, Bombay, dated 11th August 1873.
 " Officiating Secretary to Government of Bengal, No. 3678, dated 12th August 1873, and enclosures.
 Endorsement, Home Department, No. 1493J, dated 31st August 1873, forwarding letter from Government of Bombay, No. 1024 dated 20th February 1873, and enclosures.
 Ditto ditto No. 685J, dated 27th May 1874, forwarding letter from Secretary to Government, North-Western Provinces, No. 922, dated 18th June 1873, and enclosures.
 Ditto ditto No. 1617P, dated 6th June 1874, forwarding letter from Offg. Assistant Secretary to Chief Commissioner, Central Provinces, No. 570-16, dated 18th February 1874, and connected correspondence.
 Ditto ditto No. 1266J, dated 9th October 1874, forwarding letter from Offg. Registrar, High Court, Calcutta, No. 2233, dated 9th August 1872, and enclosures.
 From Chief Commissioner, British Burma, No. 12, dated 31st October 1874, and enclosures.
 " Home Department, No. 52J, dated 12th January 1875, forwarding despatch from Secretary of State, No. 53, dated 10th December 1874.

THE CODE OF CIVIL PROCEDURE.

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7. *" for goods sold at a reasonable price and delivered.*
8. *" for goods delivered to a third party at defendant's request at a fixed price.*
9. *" for necessaries furnished to the family of defendant's testator, without his express request, at a reasonable price.*
10. *" for goods sold at a fixed price.*
11. *" " " reasonable price.*
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13. *" for deficiency on a resale (goods sold at auction).*
14. *" for purchase-money of lands conveyed.*
15. *" for purchase-money of immoveable property contracted to be sold, but not conveyed.*
16. *" for services at a fixed price.*
17. *" for services at a reasonable price.*
18. *" for services and materials at a fixed price.*
19. *" for services and materials at a reasonable price.*
20. *" for rent reserved in a lease.*
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30. *" of first indorsee against maker.*
31. *" of subsequent indorsee against maker.*
32. *" of first indorsee against first indorser.*
33. *" of subsequent indorsee against first indorser; the indorsement being special.*
34. *" of subsequent indorsee against his immediate indorser.*
35. *" of subsequent indorsee against intermediate indorser.*
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37. *" of drawer against acceptor.*
38. *" of payee against acceptor.*
39. *" of first indorsee against acceptor.*
40. *" of subsequent indorsee against acceptor.*
41. *" payee against drawer for non-acceptance.*
42. *" of first indorsee against first indorser.*
43. *" subsequent indorsee against first indorser; the indorsement being special.*
44. *" subsequent indorsee against his immediate indorser.*
45. *" subsequent indorsee against intermediate indorser.*
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48. *" payee against acceptor.*
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62. *" for breach of contract to serve.*
63. *" against a builder for defective workmanship.*
64. *" by the master against the father or guardian of an apprentice.*
65. *" by the apprentice against the master.*
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67. *" by tenant against landlord, with special damage.*
68. *" for breach of warranty of moveables.*
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75. *" against a warehouseman for refusal to deliver goods.*
76. *" for procuring property by fraud.*
77. *" for fraudulently procuring credit to be given to another person.*
78. *" for polluting the water under the plaintiff's land.*
79. *" for carrying on a noxious manufacture.*
80. *" for obstructing a way.*
81. *" for diverting a water-course.*
82. *" for obstructing a right to use water for irrigation.*
83. *" for waste by a lessee.*
84. *" for assault and battery.*
85. *" for assault and battery, with special damage.*
86. *" for assault and false imprisonment.*
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88. *" for libel; the words being libellous in themselves.*
89. *" for libel; the words not being libellous in themselves.*

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90. Complaint for slander; the words being actionable in themselves.
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100. „ for an injunction restraining waste.
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105. „ for administration by creditor.
106. „ for administration by specific legatees.
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108. „ for execution of trusts.
109. „ for foreclosure.
110. „ for redemption.
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114. Register of civil suits.
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116. Summons for settlement of issues.
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120. Defendant's statement.
121. Subpoena.
122. Summons to attend and give evidence.
123. Notice to a party to the suit to show cause why he should not attend and give evidence.
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125. Decree for sale in a suit by a mortgagee or person entitled to a lien.
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128. Final decree in an administration suit by a legatee.
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130. Final decree in partnership suit.
131. Notice to show cause why execution should not issue.
132. Warrant to bailiff to give possession of land, &c.
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134. Warrant of attachment of moveable property in defendant's possession in execution of a decree for money.
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137. Attachment in execution. Prohibitory order where property consists of shares in public Company, &c.
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140. Order for payment to plaintiff, &c., of money, &c., in hands of third party.
141. Appointment of manager.
142. Authority to Collector to stay public sale of land on securities being given.
143. Warrant of sale of property in execution of decree for money.
144. Order confirming sale of land, &c.
145. Certificate of sale of land.
146. Notice to person in possession of moveable property sold in execution.
147. Order for delivery to certified purchaser of land at sale in execution.
148. Prohibitory order against payment of debts sold in execution to other than purchaser.
149. Prohibitory order against transfer of shares sold in execution.
150. Warrant of arrest in execution.
151. Certificate of non-satisfaction of decree.
152. Notice to attaching creditor.
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154. Commission for local enquiry, or for investigation of accounts.
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159. Attachment before judgment on proof of failure to furnish security.
160. Attachment before judgment. Prohibitory order where property to be attached consists of moveable property, to which the defendant is entitled, subject to lien of other person to immediate possession.
161. Attachment before judgment. Prohibitory order where property consists of immoveable property.
162. Attachment before judgment. Prohibitory order where property consists of money in hands of other persons, or of debts not being negotiable instruments.
163. Attachment before judgment. Prohibitory order where property consists of shares in public Company, &c.
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165. Bond to be given by Receiver.
166. Order of reference to arbitration under agreement of parties.

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167. Order of reference to arbitration by Court with consent.
168. Summons in summary suit on negotiable instrument.
169. Memorandum of appeal.
170. Register of appeals.
171. Notice to respondent of day fixed for hearing of appeal.
172. Decree on appeal.
173. Register of appeals from appellate decrees.
174. Notice to show cause why review should not be granted.
175. Notice of change of pleader.
176. Memorandum to be placed at foot of every summons, notice, decree, or order of Court, or any other process of Court.

A Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be cited as "The Code of Civil Procedure."
- It extends to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874;
- And it shall come into force on the day of 1876.
2. In this Act, unless there be something repugnant in the subject or context—
- "Chapter" means a chapter of this Code:
- "District" means the local limits of the jurisdiction of a principal civil Court of original jurisdiction, and includes the local limits of the ordinary original civil jurisdiction of a High Court:
- "District Court" means the principal civil Court of original jurisdiction in a district:
- "Subordinate Court" means any Court subordinate to a High Court:
- "Pleader" denotes every person entitled to appear and plead for another in Court and includes an Advocate and a Vakil:
- "Collector" denotes every officer performing the duties of a Collector of Land Revenue:
- "The cause of action" means the whole of the circumstances which the plaintiff must allege in order to shew a right to sue, and 'a material part of the cause of action' means some one of those circumstances.

"Judgment."

"Judgment" denotes the statement given by the Judge as the grounds on which his order or decision is founded:

"Decree" means the order or decision by which a suit or appeal is determined so far as concerns the Court which passes the order or decision. An order on appeal, remanding a suit for re-trial, is not within this definition:

"Foreign Court" means a Court situate beyond the limits of British India and not established by the authority of the Governor General in Council, and "foreign judgment" means the judgment of a foreign Court.

"Jail" means the civil jail of the District, or any place appointed by the Local Government for the confinement of persons under civil process:

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column of the same schedule, but not so as to render invalid any thing lawfully done in conformity with any of them.

4. But when in any other Act, or in any Regulation or Notification passed in reference prior to the day of 187 , reference is made to Act VIII of 1859, Act XXIII of 1861, or the 'Code of Civil Procedure,' such reference shall, so far as may be practicable, be read as applying to this Code; and when any procedure is directed to be in accordance with the provisions of Act VIII of 1859, Act XXIII of 1861, or the 'Code of Civil Procedure,' such procedure shall be deemed to be directed to be in accordance with the provisions of this Code.

And save as aforesaid nothing herein contained shall be deemed to affect the following enactments, (namely)—

The Oudh Civil Courts Act, 1871:

The Panjáb Appeals Act, 1873:

The Burma Courts Act, 1875.

5. The chapters and sections specified in the second schedule hereto annexed, extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865. The other chapters and sections do not extend to such Courts.

6. Nothing in this Code alters or affects the jurisdiction or procedure—

(a) of Military Courts of Request

(b) of a single officer duly authorized and appointed under the rules in force in the Presidencies of Madras and Bombay; Madras and Bombay respectively, for the trial of small suits in Military

Bázars at Cantonments and Stations occupied by the Troops of those Presidencies respectively; or

(c) of Village Munsifs and Village and District Pancháyats in Madras; (c) of Village Munsifs or Village or District Pancháyats under the provisions of the Madras Code;

(d) of Pancháyats in regard to suits against Military persons, according to the rules in force in the Presidency of Madras.

7. With respect to—

Saving of certain special or local laws. (a) the jurisdiction exercised by certain jagirdárs and other authorities invested with powers under the provisions of Bombay Regulation XIII. 1830 (*for vesting certain Jagheerdars, Surinjameedars, and Khamlars with the Power of deciding Suits within the Boundaries of their respective estates*), and Act XV of 1840 (*for extending Regulations XV of 1827, and XIII of 1830, of the Bombay Code to the Agents of Foreign Sovereigns*) in the cases therein mentioned; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the regular and special appeals to the civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as hereinafter provided, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.

9. This Act is divided into ten Parts as follows:—

- The first Part: Suits in General.
- The second Part: Incidental Proceedings.
- The third Part: Suits in Particular Cases.
- The fourth Part: Provisional Remedies.
- The fifth Part: Special Proceedings.
- The sixth Part: Appeals.
- The seventh Part: Review of Judgment.
- The eighth Part: References to the High Court.
- The ninth Part: Special Rules relating to the High Court.
- The tenth Part: Certain Miscellaneous Matters.

PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND *Res Judicata*.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

11. The Courts shall try all suits of a civil nature excepting suits of which their cognizance is barred by law.

12. Except where a suit has been stayed under section 17, the Court shall not try any suit in which the matter in issue is also in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India, or in any Court beyond the limits of British India established by the authority of the Governor General in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

13. The Courts shall dismiss any suit in which the matter substantially in issue has been heard and finally decided by a Court of competent jurisdiction proceeding according to the forms of law, by a valid sentence, in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title and in the same quality.

Explanation I.—The matter above referred to must in the former suit have been alleged by one party and either denied or confessed, expressly or impliedly, by the other.

Explanation II.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by shewing the want of jurisdiction by such evidence as is allowed by law:

No foreign judgment shall operate as a bar to a suit in British India—

- (a) if it has not been given on the merits of the case:
- (b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:
- (c) if it is in the opinion of the Court before which it is produced contrary to natural justice:
- (d) if it has been obtained by fraud:
- (e) if it sustains a claim founded on a breach of any law in force in British India.

Explanation III.—A decision is final within the meaning of this section when it is such as the Court making it could not alter on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

A decision is not final within the meaning of this section when it has been obtained by arrangement between the parties and the Court has not given a judicial opinion on the matter.

Illustrations.

The following decisions shall cause the dismissal of a subsequent suit:—

- (a). In a suit brought by one of the inhabitants of a village for the purpose of determining a right of way claimed by such inhabitants, a decree is made against him. Such decree shall bar all the other persons claiming the same right under the same title, but not if they claim under a different title.

(b). A sues B for a flock of sheep and obtains a decree. This is a bar to a subsequent suit by B against A for the flock, although the individual animals composing it may not be the same at the time of both suits, for the character of the whole matter in dispute is the same.

(c). A sues B for a particular bighá of land. Decree is made in favour of B. A dies intestate and C obtains letters of administration to his estate. B dies testate leaving D his executor who proves his will. C cannot sue D under the same title for any part of the same land.

(d). A sues B for two separate pieces of land. Decree is made in favour of A, who sells the two pieces to C. B cannot afterwards sue C under the same title for either piece separately.

(e). A sues B for Rs. 1,000. The Court decides that this sum was never due to A. A then sues B for interest on the said sum. The decree in the former suit is a bar to this suit; for the subject of the second suit, though not identical with, is incident to, and involved in, the subject of the first.

(f). A sues B for a piece of land bordering on a river and obtains a decree. This decision is a bar to a subsequent suit by B against A for alluvial soil since added to the land, or for trees the growth of the land, or for rent or meane profits in respect of its occupation, by virtue of the same title under which the land was claimed.

(g). In a suit by A against B respecting lights, the Court decides that the defendant has no right to raise his wall ten feet. This decision is a bar to a suit by B against A to enforce his alleged right to raise the wall twenty feet; for the thing demanded by the latter suit is so included in that which was decided in the former suit, that the decree in the latter suit must confirm or annul the decree in the former suit.

(h). A sues B on a written obligation for the payment of money. Decree is made in favour of B on the ground that the money claimed is not due. This is a bar to a subsequent suit by A against B for money claimed not on the written obligation but on the same transaction.

(i). A sues B and C jointly for having together wrongfully fouled the water of a stream running through A's land, and obtains a decree against them. This is a bar to a subsequent suit by A against B separately for the same wrong, even though the decree in the prior suit has remained unexecuted.

(j). B and C jointly divert the water of A's watercourse. A sues B for the diversion, and the suit is dismissed. This is a bar to a subsequent suit by A against C for the same wrong.

(k). A and B, by their joint promissory note, promise to pay C Rs. 1,000. C sues them for non-payment of this sum, and obtains a decree against them. This is a bar to a subsequent suit by C against A on the same note.

The following decisions shall not cause the dismissal of a subsequent suit:—

(l). An interlocutory order that a party shall account; for this decision is not final.

(m). A decree passed by a subordinate Court under section 655 contingent upon the opinion of the High Court upon a point referred; for this decision is not final.

(n). A decree of a Court of Small Causes under Act XI of 1865, for Rs. 1,001; for this decision has not been given by a Court of competent jurisdiction.

(o). A decree of a like Court for the balance of a partnership-account, such balance not having been struck by the parties or their agents; for such Courts have no jurisdiction to make such decrees.

(p). A decree of a Revenue Court in a suit for rent declaring the validity or invalidity of a board: for such Courts have no jurisdiction to make such declarations.

(q). A decree in a suit in which it appears on the face of the record that summons has not been served on the defendant or his agent, when the defendant or his agent has not expressly or impliedly waived the necessity of such service.

(r). A decree that the defendant pay the damages which the plaintiff sustained; for here the decision is uncertain, and is not rendered certain by any part of the record.

(s). A decree that the plaintiff shall recover such compensation as Z shall determine; for here the decision is not final.

(t). A decree in a suit for three hogsheads of sugar that the defendant pay, at the rate of Rs. 150 per hogshead, the sum of Rs. 450; for here the sentence is invalid, evident error appearing on the decree itself.

(u). A decree declaring that the defendant shall go quit of a debt demanded by the plaintiff, and which the defendant had confessed to be due in his written statement in the same suit; for here the decision is invalid as being contrary to the judicial confession of a party.

(v). A decree given against one not a party to the suit, or against a minor not properly represented by a guardian.

(w). A sues B for one bighá of land. The Court decrees that A shall recover three bighás. The defendant then sues A for the two additional bighás. The former decree is no bar, because it was not in a matter alleged by one party and denied by the other in the suit in which it was made.

(x). A's executor, B, sues C for property belonging to A's estate. It appears that C has no such property and a decree is thereupon made in his favour. Afterwards C gets possession of part of A's estate. The former decree is no bar to a subsequent suit by B against C.

(y). A sues B, C and D. Before the judgment, D's name is struck out of the proceedings. A decree afterwards given in the suit does not bind D, unless his name has been reinstated on the record and is thereon at the date of the judgment.

(z). A sues B and C. Before the judgment D's name is introduced as a party on the record by fraud and without his knowledge. A decree afterwards given in the suit does not bind D unless he has consented to becoming a party.

(aa). A obtains against B a decree declaring that A is the owner of certain land. This is no bar to a subsequent suit by B against A for a right of way over the same land.

(bb). A sues B to obtain a right to an easement for the passage of cattle. Decree is made in favour of B. This is no bar to a subsequent suit by A against B for a right of footway; for the easements are of different kinds.

(cc). A sues B for trespassing on his land. Decree is made in favour of B. This does not bar a subsequent suit by A against B claiming rent from him as tenant of such land.

(dd). A, as executor to B, sues C for certain land. Decree is made in favour of C. A may nevertheless in his own right sue C for the same land; for here the plaintiff in each suit does not prosecute in the same quality.

(ee). On the death of A, a Hindú, B takes possession of A's land, claiming to hold it as A's adopted son. A's widow, C, sues B for possession as widow. B pleads the adoption. The Court finds that B was not adopted, and decrees in favour of C. On C's death, A's collateral kindred take possession of the land. The former decree does not bar a suit by B against them for possession as A's adopted son, for the collateral kindred do not claim under C.

CHAPTER II.

OF THE PLACE OF SUING.

14. Every suit shall be instituted in the Court of the lowest grade competent to try it, unless an option as to the selection of the Court is allowed by this Code or some other law.

Suits to be instituted where subject-matter situate. 15. Subject to the pecuniary or other limitations prescribed by any law, suits

- (a) for the recovery of immovable property,
 - (b) for the partition of immovable property,
 - (c) for the foreclosure or redemption of a mortgage of immovable property,
 - (d) for the determination of any other right or interest to or in immovable property,
 - (e) for the recovery of movable property distrained or attached for any cause,
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

Provided that suits to obtain relief respecting immovable property held by the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court to whose jurisdiction he is personally subject.

Explanation.—In this section 'property' means property situate in British India.

16. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or
- (b) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside or carry on business or personally work for gain as aforesaid acquiesce; or
- (c) the cause of action arises; or
- (d) a material part of the cause of action arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action occurring at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action occurring at any place where it has also a subordinate office, at such place.

Illustrations.

(a.) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has occurred, or in Delhi, where B carries on business.

(b.) A resides at Simla, B at Calcutta, and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares,

where the cause of action occurred. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

(c.) A draws, in Simla, a bill on B, who accepts the bill in Calcutta, and returns it by post to A. The bill does not mention any place of payment. It is presented to B in Calcutta, and he fails to pay. One material part of the cause of action has occurred at Simla and others at Calcutta. The suit may therefore be brought either in Simla or in Calcutta.

(d.) A signs a contract in Calcutta for the delivery of rice to B at Delhi, and delivers it accordingly. B does not pay the price, and A sues him for it. One material part of the cause of action has occurred in Calcutta and another in Delhi. The suit may therefore be brought either in Calcutta or in Delhi.

(e.) A lets a house in Howrah to B at a monthly rent payable in Howrah. A dies intestate. C obtains, in Calcutta, a grant of letters of administration to A's estate. B allows the rent to fall into arrear. One material part of the cause of action has occurred in Calcutta and another in Howrah, and C may therefore sue B for the arrears either in Calcutta or in Howrah.

17. If a suit is instituted in a Court within the local limits of whose jurisdiction only part of the cause of action arose, and where all the defendants do not actually and voluntarily reside, or carry on business,

or personally work for gain, any defendant may move the Court to stay proceedings, and if the Court is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

Illustration.

A and B in Calcutta enter into a written contract to carry on a partnership business in Delhi, and carry it on accordingly. B resides in Benares. A sues B in Calcutta for an account of partnership transactions. If the Court finds that justice is more likely to be done by the suit being instituted in Delhi, or in Benares, it may on B's motion stay the proceedings.

18. Every such motion shall be made before the settlement of issues and at the earliest possible opportunity, and any defendant not so moving shall be deemed to have acquiesced in the institution of the suit.

19. Where the Court, under section 17, stays proceedings, and the plaintiff institutes his suit in another Court, the plaintiff shall not be chargeable with any fee under the Court Fees Act: provided that the proper fee has been levied on the institution of the suit in the former Court.

The interval between the institution of the suit and the date of so staying proceedings therein shall be excluded in computing the period of limitation prescribed for such suit.

20. In suits for compensation for wrong done to person or property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides within the local limits of the jurisdiction of another Court the plaintiff may at his option sue in either of the said Courts.

32. Any appearance, application or act in or to any Court, made or done by a party to a suit in such Court, may, except when otherwise expressly provided by this Code, be made or done by the party in person or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person if the Court so direct.

33. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead and act for such other: and in like manner when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other.

The authority shall be in writing, signed by the parties giving it, and shall be filed in Court.

34. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

1st—Persons holding general powers-of-attorney from parties not within the jurisdiction of the District Court within the limits of which the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

2ndly—Persons carrying on trade or business for and in the names of parties not within the jurisdiction of the District Court within the limits of which the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Explanation.—A partner is not, as such, a recognized agent within the meaning of this clause.

35. Processes served on a recognized agent relative to a suit shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

The provisions of this Code relative to the service of process on a party to a suit apply to the service of process on a recognized agent.

36. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing under the hand of the client and shall be filed in Court.

When so filed, it shall be considered to be in full force until revoked by a writing signed by the client and filed in Court, or until the pleader dies, or the suit is determined.

37. Processes served on the pleader of a party or left at the office of the pleader, relative to a suit, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person.

38. In all cases in which a party to a suit has not appointed a pleader to act for him, all processes shall be served upon such party in the manner hereinafter provided for the service of a summons upon a defendant to appear and answer.

39. Besides the recognized agents described in section 34, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of processes.

Such appointment shall be in writing signed by the principal, and the original appointment, or a copy thereof if the appointment be a general one, shall be filed in Court.

40. If at any stage of a suit, it appear to the Court that any person who may be entitled to, or who may claim some share or interest in, the subject-matter of the suit, and who may be likely to be affected by the result, has not been made a party,

or that any one of several plaintiffs should be made a defendant,

the Court may, in its discretion, direct that such person shall be made a party or that such plaintiff shall be made a defendant, as the case may be.

In such case the Court shall issue a notice to such person in the manner hereinafter provided for the service of a summons on a defendant.

41. If at any stage of the suit, it appear to the Court that any person has been improperly made a party, the Court may direct that his name shall be struck out from the plaint, or that the proceedings shall be stayed as against him.

CHAPTER IV.

OF THE FRAME OF THE SUIT AND THE FORM OF THE PLAINT.

42. Every suit shall as far as practicable be so framed as to afford ground for a single decision upon the whole subject in dispute, and so to prevent further litigation concerning it.

43. Every suit shall include the whole of the claim arising out of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court, and the fact of such relinquishment shall be entered on the record.

If a plaintiff intentionally relinquish or omit Relinquishment of part to sue for any portion of his claim, a suit for the portion so relinquished or omitted shall not afterwards be entertained.

Illustrations.

(a.) Two partners, A and B, dispute regarding unsettled accounts of the partnership. A sues B for a particular item of the accounts. The suit must be dismissed, for it should have been for the whole of A's demand against B, so that there might be a general adjustment of the accounts.

(b.) A, as heir of Z, claims the ownership of lands in two districts, B and C. D claims the same lands also as heir of Z. A sues D in district B for the lands in that district only, omitting the rest of the lands. A's suit against D for the lands in district C cannot afterwards be entertained.

(c.) A sues D as in the last preceding illustration. A also claims other lands from D, alleging that D obtained a conveyance of them from A by fraud. A may make those lands the subject of a separate suit.

44. Two or more claims, founded on distinct Joinder of several causes of action, by and claims in the same suit. against the same parties, and cognizable (as regards their nature) by the same Court, may at the option of the plaintiff be joined in the same suit; provided that, when claims are so joined, the jurisdiction of the Court to hear the suit shall depend on the amount or value of the aggregate subject-matters.

But different claims, founded on distinct causes of action, against different parties, cannot be joined in the same suit where each of those parties has a separate interest.

And claims made against a defendant in different characters, cannot be joined in the same suit.

Illustrations.

(a.) A and B, by their three joint promissory notes, promise to pay to C on demand Rs. 1,000, Rs. 1,500 and Rs. 2,000. A and B fail to pay the same. C may sue A and B in the same suit for Rs. 4,500, being the aggregate amount of the three notes.

(b.) A, the guardian of B, a minor, sells a portion of the minor's property to C, another portion to D, and another to E. B attains majority and sues in the same suit C, D and E to set aside the sales to them respectively. Any of the defendants may object that the suit is wrongly framed.

(c.) A sues B, the executor of C, in the same suit for a debt due from C, and also for a debt due from B personally. The defendant may object that the suit is wrongly framed.

45. All objections under section 44 shall be taken at the earliest possible opportunity; and any objection not taken before the settlement of issues shall be deemed to have been waived by the defendant.

46. If two or more claims founded on distinct Power to order dis- causes of action be joined in tinct claims to be tried one suit, and the Court is separately. of opinion that they cannot conveniently be tried together, the Court may, at any stage of the suit, order such claims, or any of them, to be tried separately on the record as made up.

47. A claim for immovable property, and a claim for the means profits of property and for means such property, may, at the option of the plaintiff, be deemed to be founded on distinct rights to sue, within the meaning of sections 44 and 46.

CHAPTER V.
OF THE INSTITUTION OF SUITS.

48. Every regular suit shall be commenced by a plaint.

49. The plaint must be distinctly written in the language in use in proceedings before the Court, and must contain the following particulars:—

- (1.) the name of the Court in which the suit is brought;
- (2.) the name, description and place of abode of the plaintiff;
- (3.) the name, description and place of abode of the defendant, so far as they can be ascertained;
- (4.) a plain and concise statement of the facts constituting the cause of action, and where and when it accrued;
- (5.) a demand of the relief which the plaintiff claims.

Explanation 1.—When the plaintiff sues in a representative character, the plaint should shew, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

(a.) A sues as B's executor. The plaint must state that A has proved B's will.

(b.) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(c.) A sues, as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

Explanation 2.—The plaint must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

Explanation 3.—If the cause of action arose beyond the period ordinarily allowed by any law for commencing the suit, the plaint must shew the ground upon which exemption from such law is claimed.

Explanation 4.—If the plaintiff seek the recovery of money, the plaint must state the precise amount, so far as the case admits.

Illustration.

A sues for means profits:

A sues for the amount which will be found due to him on taking unsettled accounts between him and B.

In each of these cases the plaintiff need only state approximately the amount sued for.

50. The plaintiff shall be subscribed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff in the manner following, or to the like effect:—

I (A. B.), the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my information and belief.

51. If the plaintiff, by reason of absence or for other good cause, be unable to subscribe and verify the plaint, the Court may, if it think fit, allow it to be subscribed and verified on his behalf by any person whom the Court considers personally acquainted with the facts of the case and otherwise competent to make the verification.

What, besides absence, is good cause, is for the consideration of the Court in each case.

Illustrations.

(a.) The fact that a plaintiff has been exempted from attendance in Court on account of his rank is not good cause why he should not subscribe and verify the plaint.

(b.) Severe illness may be good cause.

52. The plaint may, at the discretion of the Court, and at any time before the decree is passed, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such terms as to the payment of costs occasioned by the amendment as the Court thinks fit,

(a) if it do not state correctly and without prolixity the several particulars hereinbefore required to be specified therein;

(b) if it contain any particulars other than those so required;

(c) if it be not subscribed and verified as hereinbefore required; or

(d) if it do not disclose a cause of action.

Explanation.—A plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

When the plaint shall be returned to be presented to the proper Court.

53. The plaint, when presented, shall be returned to the proper Court in the following cases:—

(a.) If a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law:

(b.) If, in a suit relating to immovable property, but not coming under the proviso to section 15, it appear that no part of such property is situate within the local limits of the Court's jurisdiction:

(c.) If, in any other case, it appear that the cause of action, or a material part thereof, did not occur, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits.

54. The plaint shall be rejected in the following cases:—

(a.) If the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(b.) If the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(c.) If, in the case mentioned in section 369, the plaintiff fail to furnish security for the payment of the costs that may be incurred by the defendant:

(d.) If the suit appear from the statement in the plaint to be barred by any positive rule of law.

55. When a plaint is rejected, the Judge shall Procedure on rejecting record with his own hand a plaint. an order to that effect with the reason for such order, and the plaint, with the order and any deposition made by or on behalf of the plaintiff, shall be deposited in the record-room of the Court.

When a plaint is returned for amendment, the Procedure on return- date of its presentation and ing a plaint. return, the name of the party presenting it, and a brief statement of the reason for returning it, shall be endorsed upon it before it is returned, and shall be signed and sealed by the Judge.

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

57. If the Court consider the plaint admissible, it shall cause to be endorsed thereon a memorandum of the documents (if any) which the plaintiff has filed along with it, together with the names of the persons presenting them.

The Court shall also cause the particulars mentioned in section 49 to be entered in a book to be kept for the purpose, and called the Register of Civil suits. The entries shall be numbered in every year according to the order in which the plaint is presented.

58. If a plaintiff sue upon a written document in his own possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

If he rely on any other documents as evidence in support of his claim, he shall enter such documents in a list to be added at the foot of the plaint.

59. In case of any suit founded upon a bill of exchange or other negotiable instrument, if it be proved to the satisfaction of the Court that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it

would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

60. If the document on which the plaintiff sues be an entry in a shop-book or other book, the plaintiff shall produce the book to the Court, together with a copy of the entry on which he relies.

The Court shall forthwith mark the document for the purpose of identification; and after examining and comparing the copy with the original, shall return the book to the plaintiff.

61. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered at the foot of the plaint, and which is not produced or entered accordingly, shall not be received in evidence on his behalf at the hearing of the suit without the leave of the Court.

Explanation.—A document handed to a witness merely to refresh his memory is not received in evidence within the meaning of this section.

Issue of Summons.

62. When the plaint has been registered, a summons shall be issued to the defendant to appear and answer the claim on a day to be therein specified

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

63. If the Court see reason to require the personal appearance of the defendant or plaintiff to appear in person, the summons shall order him to appear in person in Court on the day therein specified.

If the Court see reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

64. No plaintiff or defendant shall be ordered to appear in person who at the time is *bona fide* residing at a distance of more than fifty miles from the place held, unless he be resident within the local limits of the jurisdiction of the Court:

Provided that, if railway communication exists between the place where he resides and the place where the Court is held, or within a convenient distance from such places, the Court shall have a discretion as to making such order.

65. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit cognizable by Courts of Small Causes, the summons shall be for the final disposal of the suit.

66. The day for the appearance of the defendant shall be fixed by the Court with reference to the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

67. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

68. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

A similar direction shall be given to the plaintiff at the time of issuing the summons.

The summons may contain a demand of the costs incurred to the time of payment.

CHAPTER VI.

SERVICE OF SUMMONS ON THE DEFENDANT.

69. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

70. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or by the Registrar or Clerk of the Court and sealed with the seal of the Court.

71. When there are more defendants than one, service of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction, service on one defendant for himself and for the other defendants shall be sufficient, unless the Court otherwise directs.

72. Whenever it may be practicable, the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

73. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Service on agent by whom defendant carries on business.

74. In a suit for immovable property, if the summons cannot be served on the defendant in person, and the defendant have no agent empowered to accept the service of the summons, it may be served on any agent of the defendant in charge of the property.

Service on agent in charge, in suits for immovable property.

75. If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

When service may be made on male member of defendant's family.

Explanation.—A servant is not a member of the family within the meaning of this section.

76. When the summons is served on the defendant personally, or on an agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service is made to an acknowledgment of service to be endorsed on the original summons or on a copy thereof signed and sealed as aforesaid.

Person served to endorse summons.

If such person refuse to sign the acknowledgment, the serving officer may affix the copy of the summons on some conspicuous part of the house in which the defendant is dwelling but the service of the summons shall be held sufficient if it be proved to the satisfaction of the Court, notwithstanding that a copy of the summons shall not have been so affixed.

Procedure where he refuses.

77. If the defendant cannot be found and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made, the serving officer shall fix the copy of the summons on some conspicuous part of the house in which the defendant is dwelling, and the summons shall thereupon be deemed to have been served.

If summons cannot be served, copy to be fixed on dwelling-house.

Explanation.—The manner of dwelling here intended is such as renders it probable that the fact of the fixing of the copy will come to the defendant's knowledge.

78. If the summons cannot be otherwise served on the defendant, and the serving-officer cannot find any house in which the defendant is dwelling, the serving-officer shall return the summons to the Court from which it issued, with an endorsement thereon that he has been unable to serve it.

Summons when returned with endorsement of non-service.

79. The serving officer shall, in all cases in which the summons has been served, endorse on the original summons, or on a copy thereof signed and sealed as aforesaid, the time

Endorsement of time and manner of service.

when and the manner in which the summons was served, and such endorsement shall be evidence of the service of the summons.

80. When a summons is returned without having been served, if the plaintiff satisfies the Court that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or if for any other reason the summons cannot be served, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house in which the defendant last resided, or in such other manner as the Court thinks fit.

When summons is returned unserved. Court to order substituted service if satisfied that defendant is avoiding service.

The service substituted by order of the Court shall be as effectual as if it had been made in any of the modes hereinbefore mentioned.

81. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent empowered to accept the service of the summons, the Court in which the suit is instituted shall send the summons, either by an officer of the Court or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.

The Court to which the summons is sent shall, upon receipt thereof, deliver it to the proper officer of such Court, to be served in the manner hereinbefore directed.

Upon the return of the summons by the serving officer, it shall be sent back to the Court from which it originally issued.

Explanation.—In the towns of Calcutta, Madras and Bombay, the Courts to which summonses shall be sent for service under this section are the Courts of Small Causes.

82. If the defendant be in jail under either civil or criminal process, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

Service of summons on defendant in jail.

The summons shall be returned to the officer from whom it was received, with a statement of the service endorsed thereon and signed by the officer in charge of the jail.

83. If the jail in which the defendant is confined is not in the district in which the suit is brought, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 82.

Procedure if jail be in a different district.

84. If the defendant resides out of British India, and has no agent empowered to accept the service, the summons shall be addressed to the defendant at the place where he is

Service of summons when defendant resides out of British India and has no agent to accept service.

residing, and forwarded to him by post if there be a post to such place.

85. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with his endorsement that the summons has been served on the defendant, such endorsement shall be conclusive evidence of the service.

86. Nothing herein contained shall prevent the Court from substituting for the summons a letter signed by the Judge or Registrar or Clerk of the Court, and under the seal of the Court, when the person whose appearance is required is of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 87, shall be treated in all respects as a summons.

87. When a letter or other communication is substituted for a summons, it may be sent by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the person whose appearance is required has an agent empowered to accept the service of the summons, in which case it shall be served on such agent.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

88. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

89. If on the day fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to deposit, within the time allowed, the sum required to defray the cost of issuing such summons, the Court may order that the suit be dismissed:

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he has entered an appearance by a pleader or by a duly authorized agent, when he is allowed to appear by agent, or is in attendance in person.

90. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit may be adjourned, neither party appears when called upon by the Court, the suit shall be dismissed.

91. Whenever a suit is dismissed under either of the last two preceding sections, the plaintiff may bring a fresh suit; or if within the period of thirty days from the date of the order dismissing the suit he satisfies the Court that there was a sufficient excuse for his not making the deposit required within the time allowed or for his non-appearance, as the case may be, the Court may restore the suit to its file.

92. If the plaintiff appears and the defendant does not appear, and the Court is satisfied that the summons was duly served, the Court may proceed *ex parte* either to dispose of the suit or to settle issues, according to the tenor of the summons.

93. If the plaintiff appears and the defendant does not appear, and the Court is not satisfied that the summons was duly served in any of the modes of service hereinbefore provided, the Court may direct a second summons to the defendant to be issued in any of the said modes.

94. If the plaintiff appears and the defendant does not appear, and it is proved to the satisfaction of the Court that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and may direct notice of such day to be given to the defendant.

95. If the defendant, on any subsequent day to which the hearing of the suit *ex parte* has been adjourned, appear and assign good cause for his previous non-appearance, he may, upon such terms as the Court may direct as to costs or otherwise, be heard in answer to the suit, in like manner as if he had appeared on the day fixed for his appearance.

96. If the defendant appears and the plaintiff does not appear, the Court shall pass a decree against the plaintiff by default, unless the defendant admits the claim, in which case the Court shall pass a decree against the defendant upon such admission.

97. If on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

98. When a decree is passed against a plaintiff by default, he shall be precluded from bringing a fresh suit in respect of the same right to sue.

thereof at the first hearing. And the Judge receiving such evidence shall record the grounds of his doing so.

117. The Court shall receive the documents produced by the parties.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

118. When a document is admitted in evidence at any stage of the suit, it shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced, and shall be filed as part of the record:

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the book shall be returned to the person producing it.

119. When a document is rejected by the Court, it shall be endorsed in the manner specified in the last preceding section with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

The document shall then be returned to the party who produced it, unless the Court thinks proper, on suspicion of the document having been fabricated, or for any other reason, to order that it be impounded.

120. The Court may, if it see sufficient cause, direct any document produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

121. In suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, shall ordinarily be entitled, on application to the Judge of the Court in which such document may be, to receive back the same.

122. In suits in which an appeal is not allowed, the document may be returned, on application to the Court at any time after the suit has been disposed of.

123. A document may be returned before the time mentioned in section 121 or section 122, if the Judge of the Court in which the document may be thinks proper, for any special reason, to order its return.

124. No document shall be returned which, by force of the decree, has become void or useless, or which the Court has directed to be detained for purposes of public justice.

125. When a document is returned during the pendency of the suit in which it has been produced, a certified copy, made at the expense of the applicant, and bearing the stamp prescribed by law for copies of documents, shall be substituted for the original in the record of the suit.

126. On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

CHAPTER XI.

OF THE SETTLEMENT OF ISSUES.

127. Issues arise when a proposition of fact or law is affirmed by the one party and denied by the other.

They are of two kinds: (1) issues of fact, (2) issues of law.

At the first hearing of the suit, the Court shall enquire upon what propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it may try those issues first.

128. The Court may frame the issues from any of the following materials:—

- (a) allegations orally made by the parties, or by any persons present on their behalf, or by their pleaders;
- (b) allegations made in the plaint or in the written statements (if any) tendered in the suit;
- (c) the contents of documents produced by either party.

129. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

130. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the real question or controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

OF ISSUES BY AGREEMENT OF PARTIES.

131. When the parties to a suit are agreed as to the question of fact, or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing,

(a.) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or

(b.) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c.) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

132. If the Court be satisfied, after making such enquiry as it deems proper, Court if satisfied that the agreement was executed in good faith may give judgment.

(a) that the agreement was duly executed by the parties,

(b) that they have a real interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it may proceed to record and try the issue, and deliver its finding or opinion thereon in the same manner as if the issue had been framed by the Court,

and may, upon the finding or decision on such issue, give judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

133. If at the first hearing of a suit it appear that the parties are not at issue on any question of law or of fact, the Court may at once give judgment.

134. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once give judgment for or against such defendant, and the suit shall proceed only against the other defendants.

135. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore

provided, if the Court be satisfied that no further argument or evidence than such as the parties can at once supply is required upon any such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issue,

and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties are present and none of them object.

Otherwise the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

136. If the summons has been issued for the final disposal of the suit, and either party fails to produce his evidence, either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once give judgment.

137. After the issue of such summons, if the Court is unable to give judgment at the first hearing of the suit by reason of additional evidence being required, or for any other cause, the Court shall frame the issues requiring to be determined as provided in section 127.

CHAPTER XIII.

OF ADJOURNMENTS.

138. The Court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall not be adjourned at the application of any of the parties or except from day to day when all the witnesses cannot be examined on the same day.

139. If, on any day to which the hearing of the suit is adjourned, the parties or either of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by chapter VII, or make such other order as it thinks fit.

140. If either party to a suit to whom time has been granted fails to produce his proofs, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to a decision of the suit on the record.

CHAPTER XIV.

OF SUMMONING WITNESSES.

141. The parties may, after the issue of the summons to attend summons to the defendant, to give evidence or if the summons be for the production of documents, final disposal of the suit; or after the issues have been recorded, if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court at some reasonable time before the day fixed for such disposal or settlement, as the case may be, summonses to persons whose attendance is necessary or proper either to give evidence or to produce a document.

In any such summons the names of any number of persons may be inserted.

142. The person applying for a summons shall pay into Court such a sum of money as appears to the Court to be reasonable to defray the travelling and other expenses of the person summoned, in passing to and from the Court in which he is required to attend, and for one day's attendance.

If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by the Court to which such Court is subordinate.

The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons if it can be served personally.

143. If it appear to the Court that the sum paid into Court on account of the travelling and other expenses of the person summoned in passing to and from the Court is not sufficient to cover such expenses, and for one day's attendance, the Court may direct such further sum to be paid to him as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence.

If it be necessary to detain the person summoned for a longer period than one day, the Court may from time to time order the party at whose instance he was summoned, to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and in default of such deposit being made, may order such sum to be levied by attachment and sale of the goods of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence.

144. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce, shall be described in the summons with convenient certainty.

145. Any person, whether a party to the suit or not, may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

SERVICE OF SUMMONS ON PERSONS REQUIRED TO GIVE EVIDENCE OR PRODUCE DOCUMENTS.

146. Every summons to a person to give evidence or produce a document shall be served as near as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules for the guidance of officers serving summonses on the defendant shall, *mutatis mutandis*, apply to officers serving summonses under this section.

147. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

148. If the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served in any of the ways hereinbefore specified, the Court, on being certified thereof by the return of the serving officer, and upon being satisfied that the evidence of such person or the production of such document is material, and that he is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring his attendance to give evidence, or produce the document, at a time and place to be named therein, to be affixed on some conspicuous place of the house in which he is dwelling;

and if he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the movable property of the person whose attendance is required, to such amount as the Court deems reasonable, not being in excess of the amount of the costs of attachment and of any fine to which he may be liable under the provisions of section 150.

149. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as it thinks fit.

150. If the person whose attendance is required does not appear, or appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding the amount in dispute as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine if any.

If the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Of summoning and examining Strangers to the Suit.

151. If the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own accord, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

152. Whenever any person not a party to the suit is summoned to give evidence or to produce any document in a suit otherwise than on the application of a party to the suit, the cost of summoning such person, including his travelling and other expenses, if not deposited by any party to the suit, shall (if the Court so directs) be paid by the Collector of the District, and shall be costs in the suit, and shall be paid out of any money recovered on account of costs in the suit, whether at the instance of the Government or of any of the parties to the suit, before any other costs in the suit are paid.

ATTENDANCE OF WITNESSES AND CONSEQUENCE OF NON-ATTENDANCE.

153. Whoever is summoned to appear and give evidence in a suit, must attend at the time and place named in the summons for that purpose.

154. If any person on whom a summons to give evidence or produce a document has been served fails, without lawful excuse, to comply with the summons, the Court may order him to be apprehended and brought before the Court.

If he absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, his property may be attached and sold for the purpose of realizing such fine and costs as the Court may order him to pay, in the manner and subject to the rules provided in sections 148, 149 and 150, with respect to any person on whom the service of a summons cannot be effected.

Explanation.—Before ordering a person to be apprehended it should appear to the Court that there is reason to believe that he has no lawful excuse for his failure to comply with the summons; but it is not necessary for this purpose to institute a formal investigation and come to a determination on evidence adduced.

155. If any person attending or being present in Court refuses, without lawful excuse, to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit him to jail for such time as it thinks fit, unless, in the mean time, he consents to give his evidence or to produce the document.

If after the expiration of such time he persists in his refusal, the Court may proceed to deal with him according to the provisions of the Indian Penal Code or any other law for the punishment of persons refusing to give evidence.

Explanation.—“Lawful excuse” means, in this section, such an excuse as, under the Indian Evidence Act, 1872, justifies a refusal to give the evidence or produce the document required.

156. Any person present in Court, whether a party to the suit or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document.

Such person shall be liable to be dealt with by the Court in the same manner as a party or witness, as the case may be, would be liable, under any of the provisions hereinbefore contained, to be dealt with for any refusal to obey the order of the Court.

CHAPTER XV.

EXAMINATION OF PARTIES AND WITNESSES.

157. When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness, either on his own behalf or on behalf of any other party to the suit, in the same manner as if he were not a party.

158. If a party to a suit require to enforce the attendance of any other party thereto as a witness at any stage of the suit, he shall make a special application to the Court for an order requiring such attendance, and if he shows to the satisfaction of the Court sufficient ground in support of such application, an order shall be made accordingly.

If he fails to show such ground the Court shall dismiss the application.

159. The Court, before making such order, may cause notice to be given to the party whose attendance is required, fixing a day for him to show cause why he should not attend and give evidence; and may also from time to time, for sufficient reason, enlarge the time for such purpose.

160. In support of the cause shown, the Court shall receive any declaration in writing of the party, if signed by him and verified in the manner hereinbefore provided for the verification of plaints.

161. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court may enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence. Such order may be served either on the party personally or on his pleader or recognised agent.

162. If the Court thinks it necessary to examine any party to the suit, or to inspect any document in his possession or power, and if he is not

(a) unable from sickness or infirmity to attend before the Court to be personally examined, nor

(b) exempted by reason of rank or sex from personal appearance in Court,

the Court may, of its own accord, at any stage of the suit, cause him to be summoned to attend as a witness to give evidence or to produce such document if in his possession or power, on a day to be appointed in the summons, and may examine him as a witness, or cause him to be examined in such other manner as the Court directs.

If he resides at a place distant more than fifty miles from the place at which the Court is held, the Court shall not exercise the power conferred by this section, unless railway communication exists between such places, or within a convenient distance from such places, in which case the Court shall have a discretion as to exercising such power.

163. If any party to the suit is summoned to attend to give evidence or produce a document, and, without lawful excuse, fails to comply with such summons, or, attending or being present in Court, refuses, without lawful excuse, to give evidence or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may in its discretion either pass a decree against him, or make such other order in relation to the suit as the Court thinks fit.

Provided, in the case of a party summoned to attend and failing to do so, that the summons to attend has been duly served upon him:

Nothing in the former part of this section shall be deemed to enable the Court to decree a claim which on the face of the record is not warranted by law.

Illustration.

(a.) A sues for rent. The Court orders him to attend to give evidence. A without lawful excuse fails to attend pursuant to the order. The Court, if it find the evidence before it sufficient, should, notwithstanding A's failure, make a decree in his favour.

164. No person shall be bound to attend in person to give evidence in a Court if he resides at a place distant more than fifty miles from the place at which the Court is held, unless the Court specially orders that he shall appear; nor in any case if he resides at a place distant more than one hundred miles from the place at which the Court is held:

Provided that, if Railway communication exists between the place at which he resides and the place where the Court is held, or within a convenient distance from such places, the Court shall have a discretion as to making such order.

165. Whenever a party to a suit is summoned as a witness, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

166. The Court, on making an order for the attendance of a witness residing at a distance exceeding fifty miles by the ordinary means of communication from the place where

the Court is held, shall record the reasons for making such order.

Examination of Witnesses.

167. On the day appointed for the hearing of the suit, or on any other day to which the hearing is adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and hearing and under the personal direction and superintendence of the Judge.

168. If a witness be about to leave the jurisdiction of the Court, or if a witness may for sufficient cause be examined immediately. shown to the satisfaction of the Court why his examination should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the examination of such witness forthwith, or on any day fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence.

The witness shall be examined, and his evidence shall be taken down in writing, in the manner hereinafter provided for the examination of witnesses; and the evidence so taken down may be read in evidence at any hearing of the suit.

169. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language in use in proceedings before the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and shall, if necessary, be corrected, and shall be signed by the Judge.

170. The Local Government may order that the evidence of witnesses in any District, or in any class of Courts in any District, shall be taken down by the Judge with his own hand.

Any such order may be cancelled.

When the Judge is prevented by any sufficient reason from taking down the evidence of any witness, he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

171. If the evidence is taken down in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

172. If in a Court in which English is not the language in use the parties to the suit who are present, and the pleaders of such as are absent, consent to have such evidence as is given in English taken down in that language, the Judge may take down the evidence in English with his own hand.

173. It shall be in the discretion of the Court to take down or cause to be taken down, any particular question and answer if there appears any special reason for so doing, or if any party to the suit or his pleader so requires.

174. If any question put to a witness be objected to, the question, whether the Court allow or forbid it to be put, shall be taken down.

The answer shall also be taken down if the Court allow the question to be put; and the objection and the name of the party making it shall be noticed in taking down the evidence, together with the decision of the Court upon the objection.

175. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

176. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

177. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

178. If the Judge be prevented from making a memorandum as above required, he shall record the reason of his inability to do so; and in cases in which an appeal is not allowed, he shall cause such memorandum to be made in writing from his dictation, in open Court and shall sign the same, and such memorandum shall form part of the record.

CHAPTER XVI.

OF JUDGMENT AND DECREE.

179. The Court, after inspecting the documentary evidence, and examining or hearing examined the witnesses of the parties, and hearing the parties in person or by their respective pleaders, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

180. The judgment shall be written in the Judge's mother-tongue: Provided that, if such mother-tongue be not English, and the Judge be sufficiently conversant with English to be able to write a decision in that language, and prefer so to write it, the judgment may be written in English.

181. Whenever the judgment is written in any language other than that in use in proceedings before the Court, the judgment shall be translated into the language in ordinary use in such proceedings, and the translation shall also be signed by the Judge:

Provided that, if the judgment be written in English, it shall not be necessary to make a translation of it in suits in which an appeal is not allowed, unless any of the parties require such translation.

182. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it.

183. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall, in addition to the points for determination and the decision thereon, contain the reasons for such decision.

184. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

185. The decree shall bear date the day on which the judgment was pronounced, and shall be signed by the Judge and sealed with the seal of the Court.

186. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the register of the suit, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit and by what parties and in what proportions they are to be paid.

If the decree is found to be at variance with the judgment, the Court shall of its own motion or on the application of any of the parties, amend the decree so as to bring it into conformity with the judgment.

187. When the suit is for the recovery of immoveable property with specified boundaries, or of the possession of such property, if the decree be for the recovery of a portion only of such property, or of the possession of such portion, it shall specify the boundaries of the property affected by the decree.

188. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

189. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court thinks proper to be paid on the principal

sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the date of suit, with further interest on the aggregate sum so adjudged, and on the costs of the suit, from the date of the decree to the date of payment.

190. In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments with or without interest.

And on the application of the defendant at any time after decree, the Court may order that the amount of the decree be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise as it thinks fit.

191. When the suit is for land or other property paying rent, the Court may provide in the decree for the payment of mesne profits or rent in respect of such property from the date of the suit until the date of delivery of possession to the party in whose favour the decree is made, or until the expiration of one year from the date of the decree (whichever is soonest), with interest thereupon at such rate as the Court thinks fit.

Explanation.—'mesne profits' of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom.

192. When the suit is for land and for mesne profits which have accrued on the land during a period prior to the date of suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the land and direct an enquiry into the amount of mesne profits, and dispose of the same on further orders.

193. When the object of the suit is to obtain an account of any property and to have the same duly administered under the decree of the Court, the Court, before making its final decree, shall order such accounts and enquiries to be taken and made, and give such other directions, as it thinks fit for carrying out such object.

194. When the object of the suit is to obtain the dissolution of a partnership, the Court, before making its final decree, may pass an order fixing the day on which the partnership shall stand dissolved and appointing a receiver of the partnership-estate and effects, and directing such accounts to be taken and other acts to be done as it thinks fit for carrying out such object.

195. If the defendant has set-off the amount of a debt against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court with respect to any sum awarded to the defendant shall have the same

effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

196. Certified copies of the judgment and decree, or of either of them, shall be furnished to the parties on application to the Court, and on the production of the necessary stamp-paper for making such copies where a stamp is required by law.

CHAPTER XVII.

Of Costs.

197. When disposing of any application under this Code the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

198. The Court shall have full power to give and apportion costs in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that the costs of every application or suit shall, unless the Court otherwise directs, follow the event. And if the Court otherwise directs, it shall state its reasons in writing.

199. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

200. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of or charged upon the subject-matter of the suit.

201. There shall be no rehearing or appeal on a question solely relating to costs except where it distinctly appears on the face of the proceedings either

(a) that the costs are payable out of or chargeable on some property; or

(b) that the mode in which the costs have been given is inconsistent with some enactment for the time being in force.

Illustration.

A, an incumbrancer upon a certain estate, sues to compel the payment of his charge. The Court decrees him his principal and interest, but refuses his costs. A may appeal against this refusal, for every incumbrancer has a lien for his costs on the property charged.

CHAPTER XVIII.

Of the Execution of Decrees.

202. If the decree be for the delivery of any immovable property, possession thereof shall be delivered over to the party to whom it has been adjudged.

When the immovable property is a share of the dwelling-house of an undivided Hindû family, the

decree shall be executed with due regard to the customs of the country, and so as to avoid unnecessary annoyance to the members of the family.

203. If the decree be for any specific movable, it shall be enforced by the seizure, if practicable, of the movable and by the delivery thereof to the party to whom it has been adjudged, or by the imprisonment of the party against whom the decree is made, or by attaching his property and keeping the same under attachment until the further order of the Court, or by both imprisonment and attachment, if necessary.

Provided that, in a suit for the recovery of a wife, or for restitution of conjugal rights, a decree for the plaintiff shall be declaratory and shall be enforced only by attachment in case of disobedience.

204. When the party against whom a decree for the specific performance of a contract has been made has had an opportunity of obeying the decree and has wilfully failed to obey it, the

Enforcement, by attachment or imprisonment, of decree for specific performance.

decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

The imprisonment and attachment may be continued until the party against whom the decree is made complies with the terms of it, or for such time as the Court may order:

Provided that no person shall be imprisoned under this section for a longer period than six months.

205. Payment of a sum of money ordered to be paid as the alternative to some other relief granted by the decree shall be enforced in manner hereinafter provided for the execution of a decree for money.

Order for payment of money as an alternative.

206. If the decree be for money, it shall be enforced by the imprisonment of the party against whom the decree is made, or by the attachment and sale of his property, or by both.

207. Every order under this Code for the payment of money by way of compensation or otherwise shall be enforced in the same manner as a decree for money.

Orders for payment.

208. If in any suit a decree for money is passed against a plaintiff, the decree may be enforced against him in the same manner as a decree may be enforced against a defendant.

209. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the party in whose favour the decree is made, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

210. If the warrant be directed against the moveable property of the judgment-debtor, it may be general against any of his moveable property wherever it may be found within the local limits of the jurisdiction of the Court, or

Warrant against moveable property may be general or special.

special against any of his moveable property within the same limits which is indicated by the party in whose favour the decree is made.

211. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the party ordered to execute such conveyance or endorse such instrument neglects or refuses to comply with the order, the party in whose favour the decree is made may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver a copy of the draft to the party so ordered to execute or endorse, and tender another copy of the same to the Court for execution upon the proper stamp-paper if a stamp is required by law.

The Court shall thereupon execute such draft-conveyance or endorsement, or, if necessary, may alter the same so as to bring it into accordance with the terms of the decree, and execute the conveyance or endorsement so altered:

Provided that, if any party object to the draft so tendered as aforesaid, his objections shall, within eight days of such delivery, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the draft in accordance therewith.

212. The execution of a conveyance or the Form and effect of endorsement of a negotiable instrument by the Court by Court. under the last preceding section may be in the following form—"C. D., Judge of the Court of (or as the case may be), for A. B., in a suit by E. F. against A. B.—" or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

213. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property.

Decree against representative of deceased for money to be paid out of deceased's property.

214. Whenever a person has, before the passing of a decree, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant.

Decree against surety.

215. The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in the capital or joint-stock of any rail-

Property liable to attachment and sale in execution of a decree.

way, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the defendant, and whether the same be held in the name of the defendant or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) necessary wearing apparel:
- (b) books of account:
- (c) mere rights to sue:
- (d) the right to perform the service of an idol:
- (e) stipends allowed to Military and Civil pensioners of Government:
- (f) the salary of a servant of Government:
- (g) an expectancy of succession by survivorship:
- (h) a right to future maintenance.

Provided also, that nothing in this section shall give any Court of Small Causes power to attach and sell, in execution of a decree passed by such Court, any property which Courts of Small Causes are prohibited by law from attaching and selling in execution of their decrees.

216. All monies payable under a decree shall be paid into the Court whose duty it is to execute the decree, unless such Court or the Court which passed the decree otherwise directs.

217. Except as provided in the last preceding section, no adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court, or be certified to the Court by the person in whose favour the decree was passed or to whom it may have been transferred.

Illustration.

A obtains a decree against B for Rs. 1,000, and causes an officer of Court to arrest B under a warrant. B pays the officer the Rs. 1,000. This is an adjustment made through the Court.

APPLICATION FOR EXECUTION.

218. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree, or to the Court whose duty it is, under this Code or any other law, to execute the decree, to execute the same.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted unless the Court is satisfied that on the former application due diligence was used to procure complete execution of the decree.

And no such subsequent application shall be made after the expiration of twelve years from any of the following dates (namely):—

- (a) the date of the decree sought to be enforced, or,
- (b) where the decree directs the payment of money or the delivery of property by instalments,—the date of the default in paying or delivering the instalment in respect of which the applicant seeks to enforce the decree, or
- (c) where the decree is for money and the holder of the decree and the judgment-debtor

have entered into an agreement in writing that the amount decreed, with such interest (if any) as may be therein mentioned, shall be discharged by such instalments as, if duly paid, will discharge the said amount and interest at some time within thirty years from the date of the decree, and such agreement has been filed in Court,—the date of the default in paying the instalment in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent any holder of a decree from applying for execution of the same after the expiration of the said term of twelve years, where the judgment-debtor has by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date of the application.

219. If a decree has been passed in favour of any one of several more persons than one, any decree holders may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representatives in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

220. If a decree be transferred by assignment or by operation of law from the party in whose favour it was passed to any other person, the transferee may apply for its execution to the Court which passed it; and if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions, as if the application were made by the party in whose favour the decree was passed.

Where a decree against several persons has been transferred to one of them, nothing in this section shall be deemed to authorize him to have it executed against the others.

221. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the transferor.

222. If cross-decrees between two parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are (a) decrees made by the same Court; (b) decrees sent to the same Court for execution, and (c) decrees of which one is made by the Court and the other is sent to the same Court for execution; but not (d) decrees of which one is made by one Court and the other by another Court, and not sent for execution to the former Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees.

Explanation III.—This section does not apply to—

(e) both decrees are capable of execution at the same time;

(f) the parties are the same; and
(g) the sums due under the decrees are definite.

Illustrations.

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

223. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, satisfaction for each sum shall be entered on the decree.

224. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it appear just and reasonable to do so) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

225. If any person against whom a decree has been passed dies before the decree has been fully executed, application may be made for its execution against the legal representative or the estate of the deceased.

Such representative shall be liable to the extent of the property of the deceased which has come to his hands and has not been duly disposed of.

226. Notice of an application under the last preceding section shall be given to the person named therein as the legal representative of the deceased, or as the person in charge of the estate; and if the Court, after hearing such representative or other person against the application, thinks proper to grant the same, the execution may be proceeded with against such representative or estate.

227. If a decree be ordered to be executed against the legal representative of the party against whom the decree was made, it shall be executed in the manner provided in section 213 for the execution of a decree for money to be paid out of the property of a deceased person.

228. The application for the execution of a decree shall be in writing, and shall contain in a tabular form the following particulars, namely,

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;
- (g) the amount of costs, if any, awarded;
- (h) the name of the person against whom the enforcement of the decree is sought, and the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

229. If the application be for the attachment of any immovable property belonging to the defendant, it shall contain at the foot a description of the property reasonably sufficient to identify it, and also a specification of the share or interest of the defendant therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

230. If the property be land which, whether it pays revenue to Government or not, is registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, and (where registered) the shares of the registered proprietors.

231. An application for an attachment of the movable property of the defendant or any part thereof, may be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description of the same; or the decree-holder may apply for a general attachment of the movable property of the defendant wheresoever the same can be found, to the amount of the decree and costs.

232. The Court, on receiving an application for the execution of a decree containing the particulars mentioned in section 228, or such of them as may be applicable to the case, shall enter in the register of the suit a note of the application and the date on which it was made.

If the particulars do not correspond with the decree, the Court shall not reject the application on the ground of informality; but

it shall either return the application for correction to the person making it, or shall, with his consent, cause the necessary correction to be made.

If the application be admitted, the Court shall order execution of the decree according to the nature of the application.

If application admitted, execution ordered.

MEASURES REQUIRED IN CERTAIN CASES PRELIMINARY TO THE ISSUE OF THE WARRANT.

233. In each of the following cases (namely)—

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

Notice to show cause why decree should not be executed.

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made,

the Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him:

Provided that no such notice shall be necessary

(c) in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of the last order passed on any previous application for execution: or

(d) in consequence of the application being against the legal representative of the party against whom the decree was made, if upon a previous application for execution against the same person, the Court has ordered execution to issue against him.

Explanation.—In this section the phrase “the Court” means the Court by which the decree was passed, unless when the decree has been sent to another Court for execution, in which case it means such other Court.

234. If the person to whom notice is issued

under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall pass such order as it thinks fit.

235. If the application is for a general

attachment of the movable property of the party liable under the decree, the Court may, before issuing an order for such attachment, require

the applicant to give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any person other than the party liable as aforesaid.

236. Before granting the order for a general at-

tachment, or, at the instance of the holder of the decree, at any time before its complete execution, the Court

may summon the person against whom the application is made and examine him as to the property liable to be seized in satisfaction of the decree.

237. The Court may, of its own motion or

the instance of any person interested in the enquiry, examine other persons as to property liable to be seized, and whom it thinks necessary

and examine him in respect to any property liable to be seized in satisfaction of the decree, and require the person summoned to produce any document in his possession or power relating to such property.

238. Whenever a summons is issued for the

attendance of a party to a suit, or of any other person, at any time after judgment, the rules applicable to summoning and examination of parties and witnesses after judgment, recorded shall apply to the party or witnesses so summoned.

Summoning and examination of parties and witnesses after judgment.

ISSUE OF THE WARRANT.

239. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

240. The warrant for the execution of the

decree shall bear the date of the day on which it is issued, and shall be signed by the Judge or the Registrar or Clerk of the Court, and shall be sealed with the seal of the Court, and delivered to the proper officer to be executed.

Date, signature, seal and delivery.

241. If the warrant be for the arrest of the

defendant, it shall direct the officer entrusted with the execution of the warrant to bring the defendant before the Court.

Warrant for arrest to direct defendant to be brought up.

242. A day shall be

specified in the warrant on or as soon as possible after which it is to be returned.

243. The officer entrusted with the execution of the warrant shall en-

dorse thereupon the day on, and the manner in, which it was executed; or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

OF THE EXECUTION OF DECREES FOR IMMOVABLE PROPERTY.

244. If the decree be for any immovable

property in the occupancy of the defendant or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit in which the decree was passed, the Court shall order delivery to be made by putting the party to whom the property has been adjudged, or any person whom he appoints to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Delivery of immovable property in occupancy of defendant or of some person under him.

245. If the decree be for any immovable

property in the occupancy of a tenant or other person entitled to occupy the same, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat-

Delivery of immovable property when in occupancy of tenant.

to occupy the same, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat-

of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property.

246. If the decree be for the partition of an estate, or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made according to the rules (if any) in force in the District for the partition of an estate paying revenue to Government.

247. If in the execution of a decree for any immovable property, the officer entrusted with the execution of the warrant is resisted or obstructed by any person, the person in whose favour the decree was made may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

248. If the Court is satisfied that the obstruction or resistance was occasioned by the defendant or by some person at his instigation, on the ground that the property is not included in the decree or on any other ground, the Court shall enquire into the matter of the complaint and pass such order as it thinks fit.

249. If the Court is satisfied that the resistance or obstruction complained of was without any just cause, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or some person at his instigation, the Court may, at the instance of the decree-holder, and without prejudice to any proceedings to which such defendant or other person may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, commit the defendant or such other person to jail for a term not exceeding thirty days.

250. If the resistance or obstruction to the execution of the decree has been occasioned by any person other than the defendant, claiming in good faith to be in possession of the property on his own account or on account of some person other than the defendant, the claim shall be numbered and registered as a suit between the decreeholder as plaintiff and the claimant as defendant;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

251. If any person other than the defendant is dispossessed of any property in execution of a decree, and such person disputes the right of the holder of the decree to dispossess him of

such property under the decree, on the ground that the property was *bond fide* in his possession on his own account or on account of some person other than the defendant, and that it was not included in the decree, or that, if it was included in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff and the holder of the decree as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like power as if a suit for the property had been instituted by the applicant against the holder of the decree under the provisions of chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

In hearing applications under this section the Court shall confine itself to the grounds of dispute above specified.

Nothing in this section applies to a person to whom the defendant has transferred the property after the institution of the suit in which the decree is made.

252. The order passed under either of sections 250 and 251 shall be in the nature of, and shall have the same force as, a decree in a suit, and shall be subject to the same conditions as to appeal.

Orders passed under sections 250 and 251 to have force of decrees, and to be subject to appeal.

and to be subject to appeal or otherwise.

No fresh suit shall be entertained in any Court between the same parties or persons claiming under them, in respect of the same right to sue:

Provided that nothing in this or the last preceding section shall prevent any person, instead of applying to the Court as provided therein, from instituting a suit to establish his right to the property of which he considers himself to have been wrongfully dispossessed.

OF THE EXECUTION OF DECREES FOR MONEY BY ATTACHMENT OF PROPERTY.

(a) Attachment of moveable property.

253. If the decree be for money, and the amount of the decree is to be levied from the property of the person against whom the decree has been passed, the Court shall cause the property to be attached in the manner hereinafter provided.

Explanation.—A decree for mesne profits or any other matter, the amount of which, in money, is to be subsequently determined, is a decree for money within the meaning of this section.

254. If the property be moveable property in the possession of the defendant, other than the property mentioned in section 257, the attachment shall be made by actual seizure, and the proper officer shall (except in the case of perishable articles, which he may sell at once,) keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof.

If the person executing a process directing a general attachment of moveable property, has gained access to a house, he may remove the lock from the door of any room in which he has reasonable grounds for believing any such property to be.

255. If the property be movable property to which the defendant is entitled subject to the possession of some other person under a lien or some other right or title, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the defendant.

Illustrations.

(a). A, a shipowner, mortgages his ship and the mortgagee enters into possession. B obtains a decree for money against A. The interest of A in the ship may be attached under this section.

(b). A and B are partners. B alone is in actual possession of the partnership-property. C obtains a decree for money against A. The partnership-property may be attached under this section, but the attachment must be limited to A's share therein.

256. In the case of movable property not in the possession of the defendant, a copy of the order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall be delivered or sent registered by post to the person in possession of the property.

257. If the property be a debt, not secured by a negotiable instrument or be a share in any public Company or Corporation, the attachment shall be made by a written order prohibiting the creditor from receiving the debt and the debt or from making payment thereof to any person until the further order of the Court, or prohibiting the person in whose name the share may be standing from making any transfer of the share or receiving payment of any dividend thereon, and the proper officer of the Company or Corporation from permitting any such transfer or making any such payment, until such further order.

258. If the property be a debt, a copy of the order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall also be delivered or sent registered by post to the debtor, or to each debtor when there are more debtors than one:

Provided that, where the debt is due from a public company to one of its servants, the copy so sent registered shall be addressed to the agent or manager of the Company at its principal office in British India.

259. If the property be a share in the capital or joint-stock of any public Company or Corporation, a copy of the order shall be fixed up in some conspicuous part of the Court-house, and a copy of the order shall also be delivered or sent registered by post to the proper officer of the Company or Corporation.

260. If the property be a negotiable instrument not in deposit in a Court, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

261. If the property be money or any security in deposit in any Court or in the hand of any officer of Government, which is or may become payable or deliverable to the defendant or on his behalf, the attach-

ment shall be made by a notice to such Court officer, requesting that the money or security or any interest or dividend becoming payable thereon may be held subject to the further orders of the Court from which the notice issues:

Provided that, if such money or security is deposited in a Court, any question of title or priority arising

between the decree-holder and any other person, not being the defendant, claiming to be interested in such money or security by virtue of any assignment, attachment or otherwise, shall be determined by the Court in which such money or security is in deposit.

(b) Attachment of Immoveable Property.

262. If the property be immoveable, the attachment shall be made by a written order prohibiting the defendant from alienating the property in any way, and all persons from receiving the same by purchase, gift or otherwise.

263. The order shall be read aloud at some place on or adjacent to such property, and a copy of the order shall be fixed up in a conspicuous part of the Court-house.

When the property is land or any interest in land, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

264. When an attachment has been made by actual seizure or by written order as aforesaid, and, in the case of an attachment by written order, when it has been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend or share to the defendant during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

265. When a debtor is prohibited, under section 257, from making payment of his debt to the party to whom the money is owing, he may pay the amount into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

266. If the property attached is money or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such money or currency-notes, or a sufficient part thereof, be paid over to the party entitled under the decree to receive the same.

267. The Court may direct that any immoveable or movable property, not being money or currency-notes, which has been attached, or such portion thereof as may seem necessary for the satisfaction of the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

268. When the property attached is land, if the defendant can satisfy the Court that there is reasonable ground to believe that the amount of the decree may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land or of any other property belonging to the defendant, the Court may, on the application of the defendant, postpone the sale for such period as it thinks proper, to enable him to raise the amount.

In such case the Court shall grant a certificate to the defendant authorizing him within a period to be mentioned therein to sell or mortgage the land or to let it on lease.

Where such certificate has been granted and so long as it remains in force, the provisions of section 253 shall not apply, and the year mentioned in that section, clause (a), shall be computed from the date of the expiry of the certificate.

269. When the property attached consists of debts due to the defendant or of any immovable property, the Court may if it thinks fit, instead of ordering the sale of the property, appoint a Manager thereof, with power to sue for the debts, and to collect the rents or other receipts and profits of the property, and to execute such instruments in writing as may be necessary, and to pay and apply such rents, profits or receipts towards the payment of the amount of the decree and costs.

Instruments executed in his official capacity by a Manager appointed under this section shall be of the same force as if executed by the actual owner of the property.

270. When a Manager is appointed under the Powers and duties of last preceding section, the Court may grant him as full powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as the owner himself possesses, or such of them as the Court thinks fit.

Every Manager so appointed shall—

- (a) give such security, if any, as the Court thinks fit duly to account for what he shall receive in respect of the property;
- (b) pass his accounts at such periods and in such form as the Court directs;
- (c) pay the balance due from him thereon;
- (d) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties;
- (e) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

271. When, in any District in which sales of land paying revenue to Government, or of land of which the revenue has been assigned or redeemed, in execution of decrees for money are ordinarily made by the Collector, the property attached consists of such land or of a share in such land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the

Court may authorize the Collector to make provision for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share.

Whenever such authority is given, the Court may order security to be taken. The Court may order that security be taken from the defendant for the amount of the decree.

272. The Local Government may from time to time, with the sanction of the Governor General in Council, make special rules for any territory, imposing conditions in respect to the sale of land in execution of decrees for money; and if, when this Code comes into operation in any territory, any such rules are in force therein, the Local Government may continue such rules in force, or it may from time to time modify the same with the sanction of the Governor General in Council.

All rules so made or continued, and all modifications of such rules, shall be published in the local official Gazette or (where there is no such Gazette) in the *Gazette of India*, and shall thereupon have the force of law.

273. If the amount decreed with costs and Order for withdrawal all charges and expenses of attachment after satisfaction of decree. resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment.

If the defendant so desire, and deposit in Court a sum sufficient to cover the expense, the order shall be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment, and such steps shall be taken as are necessary for staying further proceedings in execution of the decree.

OF SALES IN EXECUTION OF DECREES.

274. Sales in execution of decrees shall be Sales by whom to be conducted and how made. conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in the next following section, shall be made by public auction in manner hereinafter mentioned.

No such sale shall be made on a holiday or on any other day on which the Court is closed.

275. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

276. If the property to be sold is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Collector of the District in which the land is situate has not been prohibited by the Local Government from selling land in execution of decrees, the sale shall be conducted by such Collector on the requisition of the Court.

277. When any property, whether movable or immovable, is ordered to be sold by public auction in execution of a decree, a proclamation of the in-

tended sale shall be made in the current language of the district. Such proclamation shall specify

- (a) the time and place of sale;
- (b) the property to be sold;
- (c) the revenue assessed upon the estate or part of the estate, when the property to be sold is an estate or a part of an estate paying revenue to Government;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) any other particulars that the Court thinks necessary;

The proclamation shall also describe, as fairly and accurately as possible, everything which it is material for the purchaser to know in order to judge of the nature and value of the property.

276. The proclamation shall be made on the spot where the property is attached by beat of drum or any other customary mode; and a written notification to the same effect shall be affixed in the Court-house of the Judge who has ordered the sale, and in some conspicuous spot in the town or village in which the attachment has taken place.

When the property ordered to be sold consists of land or of any right or interest in land, a written notification shall also be affixed in the office of the Collector of the District in which such land is situate and in the Court-house of the principal Civil Court of the District when the Court which ordered the sale is subordinate to such Court.

If the Court so direct, such notification shall also be published in the official Gazette and in some local newspaper.

279. Except in the case of articles of a perishable nature (which may be sold at once), no sale under this Chapter shall take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the notification has been affixed in the Court-house of the judge ordering the sale.

280. The usual process for attachment and sale, when the property to be attached consists of any movable property other than a debt, may be issued either successively or simultaneously as the Court directing the sale in each instance thinks fit.

281. If the property sold be movable, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

282. If the property sold be immovable, the deposit by purchaser person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

283. No sale of immovable property shall become absolutely binding on the vendor until it has been confirmed by the Court.

284. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day.

285. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

286. Every re-sale of immovable property in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

287. The deficiency of price (if any) which may happen on a re-sale under section 282 or section 285, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

288. The holder of the decree in execution of which the property is sold, may with the express permission of the Court (but not otherwise) purchase the property, and in such case the amount of his decree may be taken as payment in whole or in part, as the case may be, of the purchase-money.

289. When the land sold in execution of a decree is a share of an undivided estate, if the lot has been knocked down to a stranger, any co-sharer other than the party liable for the amount of the decree may claim to take the share sold at the sum at which the lot was so knocked down:

Provided that the claim be made before sunset on the day of sale and that the claimant repay to the purchaser the amount of his deposit and fulfil all the conditions of the sale.

290. No irregularity in the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or for the recovery of the specific property and for compensation in default of such recovery.

291. Any person whose interest in immovable property has been sold under this Chapter may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it ;

Sale of land not set aside on ground of irregularity unless substantial injury.
But no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

The purchaser at any such sale may apply to the Court to set aside the sale on the ground that the person whose interest in the property purported to be sold had no such interest.

292. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit shall lie to set aside or render void an order passed under this section.

If sale set aside, price to be returned to purchaser.
293. When a sale of immovable property is set aside under section 292,

or when it is found that the property sold did not belong to the judgment-debtor and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money with or without interest as the Court may direct.

Payment of the purchase-money and of the interest (if any) allowed by the Court shall be enforced under the rules provided by this Chapter for the execution of a decree for money.

294. When a sale of immovable property has become absolute in manner aforesaid, if the person declared the purchaser of the property supplies paper stamped as if it were a conveyance of the same, the Court shall grant him a certificate thereon, to the effect that he has purchased the defendant's interest in the property sold, and such certificate shall be deemed to be a valid transfer of such interest.

Certificate to be granted to purchaser of immovable property.
295. The certificate shall state the name of the person who, at the time of sale, is declared to be the purchaser.

Benami purchaser not recognized.
No other person shall maintain any claim against the certified purchaser on the ground that the purchase was made on behalf of such other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

Delivery of movable property belonging to defendant actually seized.
296. When the property sold is any movable property in the possession of the defendant, or to the immediate possession of which he is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

297. When the property sold is any movable property to which the defendant is entitled subject to the possession of some other person under a lien or some other right or title, the delivery to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of immovable property in the occupancy of the defendant.
298. When the property sold is any immovable property in the occupancy of the defendant or of some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the institution of the suit in which the decree was passed, the Court shall order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who may refuse to vacate the same.

Delivery of immovable property in the occupancy of a tenant or other person entitled to occupy the same.
299. When the property sold is immovable property in the occupancy of a tenant or other person entitled to occupy the same, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the defendant has been transferred to the purchaser.

Delivery of debts and of shares in public Companies.
300. If the property be a debt not secured by a negotiable instrument, or be a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the Manager, Secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

Delivery of negotiable instruments of which actual seizure has been made.
301. When the property sold consists of a negotiable instrument of which actual seizure has been made, the same shall be delivered to the purchaser.

Transfer of negotiable instruments and shares.
302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing, is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect :—" A. B. by C. D., Judge of the Court of (or as the case may be) ; in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same ; and any endorsement made or document executed or receipt signed

as aforesaid shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

303. If the purchaser of any immovable property sold in execution of a decree be resisted or obstructed by the defendant or any one on his behalf, in obtaining possession of the property, the provisions of this Chapter relating to resistance or obstruction to a party in whose favour a decree has been made in obtaining possession of the property adjudged to him, shall be applicable.

304. If it appear that the resistance or obstruction by claimant other than defendant, claiming a right to the possession of the property sold, as proprietor, mortgagee, lessee, or under any other title, or if, in the delivery of possession to the purchaser, any such person claiming as aforesaid be dispossessed,

the Court, on the complaint of the purchaser, or of such person claiming as aforesaid, shall enquire into the matter of the complaint and pass such order as it thinks fit.

The party against whom such order is passed shall be at liberty to bring a suit to establish his right to the property at any time within one year from the date of such order.

305. Whenever assets are realized by sale or otherwise in execution of a decree, the person entitled to be first paid out of assets realized, be first paid thereout, after deducting the costs of the realization, is the holder of the decree on whose application the property producing such assets was first attached:

Provided that such attachment was in execution of a decree for money then capable of being completely executed.

No subsequent attachment of the same property by another party in execution of another decree, whether of a prior or of a later date, shall affect the title of the holder of the decree first above referred to, to be paid out of the said proceeds.

Nothing in this section affects any right of the Crown.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

306. The surplus (if any) remaining after the claim of the person on whose application the property was first attached has been satisfied in full from the assets, shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees for money against the same defendant and may not have obtained satisfaction thereof.

Provided that, when any property is sold subject to a mortgage and the mortgagee has obtained a decree for the money due thereon, he shall not be entitled to share in any surplus arising from such sale, unless he waives his right as mortgagee.

307. If it appear to the Court upon the application of the holder of a decree, that any other decree under which property has been attached was obtained by fraud or other improper means, the Court may either order that the proceedings be stayed and refer the parties to a regular suit, or, if it find the materials before it sufficient for deciding the case at once, may order,

- (a) if such other decree be a decree of the same Court, that the applicant shall be satisfied out of the proceeds of the property attached so far as the same may suffice for the purpose;
- (b) if the other decree be a decree of another Court, that the proceedings be stayed to enable the applicant to obtain a similar order from the Court by which the decree was made.

Explanation—A decree obtained in consequence of a mere error in procedure is not obtained by improper means within the meaning of this section.

OF THE EXECUTION OF DECREES BY IMPRISONMENT.

308. The imprisonment of the defendant in execution of a decree may be in the jail of the district in which the Court ordering the imprisonment is held, or, when such jail does not afford suitable accommodation, in any other jail, though not in such district, which the Local Government may appoint for the confinement of persons ordered to be imprisoned by the Courts of such district.

309. When the defendant is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as it considers sufficient with reference to the class to which he belongs.

But (except as provided in the next succeeding section) such allowance shall not exceed four annas per day.

The monthly allowance shall be supplied by the party on whose application the decree has been executed, to the proper officer of the Court or of the jail in which the defendant is confined, by monthly payments in advance before the first day of each month.

The first payment shall be made for such portion of the current month as remains unexpired before the defendant is committed to jail.

310. The Court may, in case of illness or for other special cause, fix the monthly allowance at such sum not exceeding six annas per day as appears necessary.

The order fixing such allowance may from time to time be revised and altered on due cause being shown.

311. Sums disbursed by the holder of a decree for the subsistence of the defendant in jail shall be added to the costs of the decree, and shall be recoverable by the attachment and sale of the defendant's property under the rules contained in this Chapter for the execution of a decree for money:

Provided that the defendant shall not be detained in jail or arrested on account of any sum so disbursed.

OF DISCHARGE FROM IMPRISONMENT.

312. The defendant shall be discharged from jail, by order of the Court,

- (a) on the decree being fully satisfied, or
- (b) at the request of the person on whose application he has been imprisoned, or
- (c) on such person omitting to pay the allowance as hereinbefore directed, or
- (d) by reason of his insolvency, as hereinafter provided, or
- (e) when the term of his imprisonment as limited by section 313 is fulfilled.

A defendant discharged under this section cannot be re-arrested under the decree in execution of which he was imprisoned.

313. No person shall be imprisoned in execution of a decree for a longer period than two years;

or for a longer period than six months if the decree be for the payment of a sum of money not exceeding five hundred rupees;

or for a longer period than three months if the decree be for the payment of a sum of money not exceeding fifty rupees.

OF INSOLVENT DEBTORS.

314. Any person arrested or imprisoned in execution of a decree for money may apply to be declared an insolvent.

Such application may be made to the District Court which ordered his arrest or imprisonment, as the case may be or when the District Court has not ordered his arrest or imprisonment, then to the District Court to which the Court that made the order is subordinate.

315. The application shall set forth—

- (a) the fact of his arrest or imprisonment;
- (b) the amount, kind and particulars of his property;
- (c) the place or places in which such property is to be found;
- (d) his willingness to place it at the disposal of the Court;
- (e) the amount, nature and particulars of his debts; and
- (f) the names and residences of his creditors, so far as they are known or can be ascertained by him.

316. The application shall be subscribed and verified by the applicant in manner hereinbefore prescribed for subscribing and verifying plaints.

317. The Court shall fix a day for hearing the application and shall cause a copy of the application, with a notice in writing of the time and place at which it will be heard, to be served on the holder of the decree or his pleader and to be published in such manner as the Court thinks fit.

318. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other creditor of the applicant or on any person alleging himself to be such a creditor and applying for leave to be heard on the application.

319. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the applicant, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the decree-holder and the other creditors (if any) in opposition to the applicant's discharge, and may, if it thinks fit, grant time to the decree-holder and the other creditors (if any) to adduce evidence shewing that the applicant is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of Receiver.

320. If the Court is satisfied—

- (a) that the statements in the application are substantially true;
 - (b) that the applicant has not fraudulently concealed, transferred, or removed any of his property;
 - (c) that he has not, knowing himself to be insolvent, unfairly given a preference to any of his creditors by any payment or disposition of his property;
 - (d) that he has not committed any other act of bad faith,
- the Court may declare him to be an insolvent, and may make an order appointing a Receiver of his property.

321. The order under section 320 appointing a Receiver shall operate to vest in him all the insolvent's property (except such particulars as are specified in section 215) whether set forth in his application or not.

322. The Receiver so appointed shall possess himself of all such property, except as aforesaid; and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent from arrest or imprisonment, as the case may be.

323. Where the applicant is under arrest, the Court may, pending the hearing—

- (a) order him to be immediately committed to jail; or
- (b) leave him in the custody of the officer of Court to whom the service of the warrant was entrusted, on the applicant depositing the fees of such officer, which shall be at the same daily rate as the lowest rate charged in the same Court for serving process; or
- (c) if the applicant furnish sufficient security for his appearance at any time when called upon, his surety undertaking in default of such appearance to pay the amount mentioned in the warrant, the Court may release the applicant on such security.

324. The Court shall frame a schedule of creditors and their respective debts according to the justice of the case.

The declaration under section 320 shall be deemed to be a decree in favour of each of the said creditors for their respective debts.

Any creditor of the applicant who is not mentioned in such schedule may apply to the Court for an order directing his name to be inserted therein.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name

of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

325. The Receiver shall proceed under the direction of the Court—

- (a) to convert the property into money;
- (b) to pay thereout debts, fines and penalties (if any) due by the insolvent to the Crown;
- (c) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts, and without any preference, notwithstanding anything contained in sections 305 and 306;
- (d) to deliver the surplus, if any, to the insolvent or his legal representative.

326. An insolvent discharged under section

Effect of discharge. 322 shall not (except as provided in section 327) be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 328) his property (except as excepted in section 321) shall, by order of the Court, be liable to attachment and sale until the decrees against him held by the scheduled creditors are fully satisfied or become incapable of being executed.

327. The discharge of the insolvent under

Defendant liable to be again arrested if proved guilty of fraudulent concealment of property, &c. section 322, shall not protect him from being arrested again and imprisoned on account of any of the scheduled debts if it be shown that he had,

- (a) in the application made by him, been guilty of any concealment or of wilfully making any false statement respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;
- (b) fraudulently concealed, transferred or removed any property; or
- (c) committed any other act of bad faith:

In any of such cases the Court shall, at the instance of the scheduled creditors, either retain the applicant in confinement, or commit him to jail, as the case may be.

Provided that the term of imprisonment under this section shall not exceed two years from the date of committal.

Or the Court may, if it think fit, send the applicant to the Magistrate to be dealt with according to law.

328. If the aggregate amount of the scheduled

When Court may declare defendant absolved from further liability. debts is one hundred rupees or a less sum, the Court may declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

328A. The Local Government may invest any

Investment of other Courts with powers of District Courts. Transfer of cases. Court other than a District Court with the powers conferred on District Courts by sections 314 to 328 (both inclusive), and the District Judge may transfer to any such Court any case instituted under section 314.

QUESTIONS RELATING TO THE EXECUTION OF DECREES.

Determination of questions regarding amount of mesne profits and interest and sums paid in satisfaction of decrees. **329.** The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely)—

- (a) questions regarding the amount of any mesne profits which by the terms of the decree

have been directed to be adjusted in the execution of the decree;

- (b) questions regarding the amount of any profits or interest which the decree has made payable in respect of the subject-matter of a suit between the date of its institution and the execution of the decree;
- (c) questions relating to sums alleged to have been paid in discharge or satisfaction of the decree;
- (d) any other questions arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by the decree.

OF EXECUTION OF A DECREE BEYOND THE LOCAL LIMITS OF THE JURISDICTION OF THE COURT BY WHICH IT WAS MADE.

330. A decree of any Court in British India or established by the authority of the Governor-General in Council in the territories of any Native Prince or State in India, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in the manner hereinafter provided, within the jurisdiction of any other such Court.

Decree of one Court may be executed within the jurisdiction of another Court. or established by the authority of the Governor-General in Council in the territories of any Native Prince or State in India, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in the manner hereinafter provided, within the jurisdiction of any other such Court.

331. The holder of a decree may apply to the Court by which it was made for execution, or to send to the Court by which he wishes it to be executed—

- (a) a copy of the decree;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of such Court, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and
- (c) a copy of any order for execution of the decree that has been passed.

Provided that no copy of a decree made by a Court of Small Causes, or in a case cognizable by a Court of Small Causes, shall be sent under this section to a High Court. But the holder of any such decree wishing it to be executed in a Presidency Town, may send to the local Court of Small Causes the copies and certificate respectively mentioned in clauses (a), (b) and (c) of this section; and such Court shall thereupon execute the decree as if it had been made by itself.

332. The Court, unless there be any sufficient

Copy of decree and order for execution to be sent. reason to the contrary, shall cause such copies and certificate to be prepared: they shall be signed by the Judge or Registrar or Clerk of the Court and shall be sealed with the seal of the Court; and the Court shall send them by post to the Court by which the holder of the decree wishes it to be executed, if such Court be within the same district, or otherwise to the principal Civil Court of original jurisdiction in the district in which the holder of the decree wishes it to be executed.

333. The Court to which such copies and certificate are sent shall cause them to be filed, without any proof of the decree or order for execution, or of the copies thereof, or of

the seal or jurisdiction of any Court, or of the signature of any Judge or officer, unless the Court, under any peculiar circumstances to be specified in an order, requires such proof.

334. The copy of the decree and of any order for execution, when filed in the Court to which such copy has been sent for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may, if the Court be the principal Civil Court of original jurisdiction in the district, be executed by such Court, or by any Court subordinate thereto to which such principal Civil Court may entrust the execution of the same.

335. When the holder of a decree sent under the foregoing provisions for execution by a Court other than the Court which made it applies for execution of the decree to the Court to which it has been so sent, such Court, or any subordinate Court to which the execution of the decree may be entrusted, shall proceed to execute the decree according to the provisions of this Chapter so far as the same are applicable, and, so far as they are not applicable, according to its own rules in the like cases:

Such Court shall not enquire into the validity of the decree unless it appear upon the face of the decree that the Court by which it was passed had no jurisdiction to pass it.

336. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original Civil jurisdiction.

337. The Court to which the holder of the decree so applies, shall have as large powers in executing the decree as the Court by which it was made would have had if the decree had been capable of being executed within the jurisdiction of the same Court.

338. The Court to which such application is made or referred for execution as aforesaid, shall take cognizance of and punish all wrongful acts or irregularities done or committed in executing such decree; and all persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had made the decree.

339. The Court to which such application is made or referred as aforesaid, may, upon sufficient cause being shown, stay the execution of the decree for a reasonable time, to enable the defendant to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby; or if application for execution had been made thereto;

and in case the property or person of the defendant has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of such application.

340. Before passing an order to stay execution, or for the restitution of property or the discharge of the defendant under section 339, the Court may require such security from, or impose conditions upon, the defendant, as it thinks fit.

341. Any such order of the Court in which the decree was passed or of such Court of appeal as aforesaid, shall be binding upon the Court to which the application for execution was made, and shall be a sufficient indemnity to all persons acting in execution of any process issued by such last mentioned Court.

342. No discharge of a defendant under section 339, shall prevent him from being retaken in execution of the decree.

343. The orders of a Court for executing the decree of another Court shall be subject to the same rules in respect of appeal, as if the decree had been originally passed by the Court making such orders.

344. The rules contained in this Chapter shall be applicable to the execution of any judicial process for the sale of property or payment of money, which may be ordered by a Civil Court in any civil proceeding.

OF CLAIMS TO ATTACHED PROPERTY BY STRANGERS TO THE SUIT.

345. If any claim be preferred to, or any objection be made to the sale of, any property which shall have been attached in execution of a decree, as not liable to be sold in execution of the decree against the defendant, the Court shall, subject to the proviso contained in section 351, proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit.

346. The claimant or objector must adduce evidence to show that at the date of the attachment he was entitled to, or possessed of, the property attached.

347. If the property is immoveable, and if upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the party against whom execution is sought or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the party himself at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, the Court shall pass an order for releasing the property from attachment.

348. If in like manner the Court is satisfied that the property was in possession of such party, subject to a mortgage or lien in favour of some other person, the Court shall continue the attachment subject to the claims of such other person.

349. If the property attached be immovable, and the Court is satisfied that the property was, at the time it was attached, in possession of the party against whom execution is sought as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim and may order the sale to proceed at such time as it thinks fit.

350. The party against whom an order is passed under section 347, may bring a suit to establish his right to attach the property, and on obtaining a decree in such suit, the said order shall be set aside.

The party against whom an order is passed under section 349, may, within one year from the date of the order, bring a suit for a declaration that at the date of the attachment he was entitled to, or possessed of, the property attached.

351. A claim to attached property, or an objection to the sale of such property, shall be made without delay to the Court which ordered the attachment; and if the property to which the claim or objection applies has been advertised for sale, the sale may, if the Court thinks fit, be postponed pending the investigation into the claim or objection:

Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed with a view to obstruct the ends of justice.

352. If, on the ground of delay in making it, the claim or objection be disallowed, claimant or objector may sue. If the Court refuse to investigate it, the proceedings on such claim or objection shall not preclude a suit by the claimant or objector.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XIX.

OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

353. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives.

Illustrations.

(a). A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the cause of action survives to C, and the suit does not abate.

(b). In the same case, all the parties die before decree. The cause of action survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

354. If there be more plaintiffs or defendants than one, and any of them dies, and if the cause of action survives to the surviving plaintiff or plaintiffs alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

355. If there be more plaintiffs than one, and any of them dies, and if the cause of action does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name in the register of the suit in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

356. If no application be made to the Court within a reasonable time by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative of the deceased plaintiff shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

357. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff in the register of the suit, and the suit shall thereupon proceed.

358. If no such application be made to the Court within a reasonable time, by any person claiming to be the legal representative of any such deceased plaintiff as aforesaid, the Court may pass an order that the suit shall abate, and award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of such deceased plaintiff as aforesaid;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of such deceased plaintiff as aforesaid, and for proceeding with the suit in order to a final determination of the matter in dispute.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

359. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or

side at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

360. If there be more defendants than one and any of them die, and the cause of action does not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom the plaintiff alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative in the register of the suit in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant shall be at liberty to object that he is not the legal representative of the deceased defendant, or to make any defence appropriate to his character as such representative.

361. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and where the decree is against a female defendant, it may thereupon be executed against the wife alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

362. The bankruptcy or insolvency of a plaintiff in any suit which his assignee might maintain for the benefit of his creditors shall not bar the suit, unless such assignee declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

If the assignee neglect or refuse to continue the suit and to give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may award to the defendant the costs which he has incurred in defending the suit, to be recovered from the plaintiff's estate.

363. The abatement or dismissal of a suit under this chapter shall have the same effect on the rights of the parties as if the suit had been dismissed on the merits.

CHAPTER XX.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

364. If, at any time before judgment, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, and (b) that there are sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter.

Nothing in this section shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

365. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitations in the same manner as if the first suit had not been brought.

366. If a suit be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith.

CHAPTER XXI.

OF PAYMENT INTO COURT.

367. The defendant in any suit involving a claim to money, may at any stage of the suit deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Notice of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall be paid to the plaintiff on his application.

No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or full short thereof.

368. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; but if the Court decides that the payment by the defendant has been a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall file in Court a statement to that effect, and the Court shall pass judgment accordingly, and in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a). A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b). B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shewn that the litigation was necessary.

(c). A owes B Rs. 100 and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

(d). A pays Rs. 100 into Court under the circumstances mentioned in illustration (c). B accepts it in part discharge of his claim and continues the suit for the remainder. B fails. The Court should order him to pay all the costs of the suit.

The above illustrations assume that, save what is therein mentioned, there is nothing in the conduct of the parties which should influence the Court in awarding costs.

CHAPTER XXII.

OF REQUIRING SECURITY FOR COSTS.

369. When the plaintiff ordinarily resides out of British India, and does not possess any sufficient immovable property within British India independent of the property in suit, he shall, on presenting the plaint or within such time as the Court may fix, furnish security for the payment of the costs that may be incurred by the defendant.

370. If at any subsequent stage of a suit it appears to the Court that a sole plaintiff is, or that all the plaintiffs (when there are more plaintiffs than one) are, residing out of British India, and such plaintiff or plaintiffs does not or do not possess any sufficient immovable property within British India independent of the property in suit, the Court may order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by the defendant.

In the event of such security not being furnished within the time so fixed, the Court shall pass a decree against the plaintiff or plaintiffs by default, unless he or they be permitted to withdraw from the suit under the provisions of section 364.

371. A person is considered to be resident out of British India, within the meaning of the two last preceding sections, who leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs.

CHAPTER XXIII.

OF SETTING ASIDE DECREES BY DEFAULT AND EX PARTE.

372. In any case in which a decree is passed or setting aside decree *parte* against a defendant or *parte* against defendant under section 92, he may, within a reasonable time, not exceeding thirty days after any process for enforcing the decree has been executed, apply to the Court by which the decree was made for an order to set it aside;

and if it be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

373. In any case in which a decree is passed or setting aside decree against a plaintiff by default or by default against plaintiff under section 96, he may, within thirty days from the date of the decree apply for an order to set it aside; and if it be proved to the satisfaction of the Court that the plaintiff was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

374. No decree shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party.

375. In every case in which the Court passes an order under section 372 or section 373 for setting aside a decree, the order shall be final.

CHAPTER XXIV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

376. The Court may order a commission to issue for the examination on interrogatories or otherwise of the following persons:—

(a) persons who, under section 162 or section 164, are not bound to attend the Court;

(b) persons who are from sickness or infirmity unable to attend;

(c) persons exempted by reason of rank or sex, from appearing in Court.

377. Such order may be made by the Court either of its own motion, or on the application of any party to the suit or of the witness to be examined.

378. The Court may, by the same or any subsequent order, give such directions as to taking the examination of an absent witness as it thinks fit.

379. If a Commission be issued for the examination of a person who resides within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court or to any Court subordinate to such Court, or to any other person whom the Court issuing the Commission thinks proper to appoint to execute the same.

380. If the person resides at some place in British India beyond the jurisdiction of the Court issuing the Commission, the Commission shall ordinarily be issued to any Court, not being a High Court, within whose jurisdiction he resides, and which can most conveniently execute the same:

Provided that, under special circumstances, the Commission may be issued to any person whom the Court issuing it thinks fit to appoint.

381. If the person resides beyond the jurisdiction of the Court issuing the Commission and within the local limits of the ordinary original civil jurisdiction of any High Court, the Commission shall be issued to the Court of Small Causes within whose jurisdiction the witness resides, or to any Court, other than a High Court, which now exists or may hereafter be established with jurisdiction within the same local limits:

Provided that, under special circumstances, the Commission may be directed to any person whom the Court issuing the Commission thinks fit to appoint.

382. In the case of a person residing at any place not within British India, the Court, if satisfied that the evidence of such person is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a Commission for his examination:

Provided that, if the suit be pending in any Court subordinate to the District Court, such subordinate Court shall not issue the Commission, but the District Court may issue the Commission on the application of the subordinate Court.

383. After the Commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the Commission has otherwise directed, in which case the Commission shall be returned in terms of such order, and the Commission and the return thereto, and the evidence taken under it, shall form part of the record of the suit.

384. Evidence taken under a Commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evi-

dence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by Commission has ceased at the time of reading the same.

385. If the person whose evidence is required is in jail, his evidence shall be taken in the mode prescribed by the Prisoners' Testimony Act, 1869, or by any other law for the time being specially applicable to the taking of evidence in the case of prisoners.

B.—Commission for Local Investigations.

386. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property or the amount of any mesne profits or damages, or annual nett profits, the Court may issue a Commission to an officer of the Court appointed to execute such Commissions, or, if there be no such officer, to any suitable person, directing him to make such investigation and to report thereon to the Court.

387. If in any case it appears desirable to employ an officer of Government other than the officer of the Court appointed to execute such Commissions, the Court may, with the consent of the immediate superior of the officer whom the Court wishes to employ, appoint him to make such investigation and report.

388. The Commissioner, unless otherwise directed by the order of appointing parties and witnesses and call for papers, may examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him.

The Commissioner may also call for and examine documents and other papers relevant to the subject of enquiry.

The Commissioner, after such local inspection as he deems necessary, and after reducing to writing, in the manner hereinbefore prescribed for taking the evidence of witnesses in the presence of the Judge, the evidence taken by him, shall return such evidence, together with his report in writing, subscribed with his name, to the Court.

389. The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or any of the parties to the suit with the permission of the Court, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he may have conducted the investigation.

C.—Commission to investigate Accounts.

390. In any suit in which an investigation or adjustment of accounts is necessary, the Court may appoint such officer or other

person as aforesaid to be a Commissioner for the purpose of making such investigation or adjustment.

391. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,
Court to give Commissioner necessary instructions.

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation.

392. The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further enquiry as is requisite, and shall make such decree or order as it thinks fit.
Proceedings of Commissioner may be received in evidence.
 Power to make further enquiry if dissatisfied.

D.—General Provisions.

393. Whenever a Commission is issued under any of the provisions of this Chapter, the Court, before issuing the Commission, may order such sum (if any) as it thinks reasonable for the expenses of the Commission to be paid into Court by the party at whose instance or for whose benefit the Commission is issued.
Expenses of Commission to be paid into Court.

394. The provisions of this Code relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under the foregoing provisions relating to Commissions to examine persons, whether parties to the suit or not or to make local enquiries, or to investigate or adjust accounts.
Attendance, examination and punishment of witnesses summoned by Commission.

The examinations of witnesses before a Commission shall be conducted in the same manner as the examination of witnesses is conducted in the Court from which the Commission issued.

The Commissioner shall take down all questions and answers, and make a note of the objections, if any, to the admissibility of evidence.

Any penalty to which a witness may be liable under this section shall, on the application of the Commissioner, be imposed by the Court from which the Commission issued.

The Commissioner shall have the same legal powers, as regards the summoning, examination and remuneration of witnesses, as the Court issuing the Commission.

395. Whenever a Commission is issued under the provisions of this Chapter, the Court shall direct that the parties to the suit shall appear before the Commission in person or by their agents or pleaders.
Procedure *ex parte* where parties do not appear.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXV.

SUITS BY PAUPERS.

396. A suit may be brought *in forma pauperis* in the Court having jurisdiction over the claim, subject to the following rules.
Suits may be brought in *forma pauperis*.

397. No suit shall be brought *in forma pauperis* to recover compensation for loss of caste, slander, abusive language or assault.
What suits excepted.

398. The application for permission to institute a suit *in forma pauperis* shall be by petition in writing.
Application to be by Petition on stamp paper.

399. The petition shall contain the particulars required by section 49 in regard to plaints in suits, and shall have annexed to it a schedule of any movable or immovable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints.
Contents of petition.

400. Notwithstanding anything contained in section 32, the petition shall be presented to the Court by the petitioner in person.
Presentation of petition.

But if he satisfy the Court that he is prevented by sickness from attending the Court in person, or if the petitioner be a female who, according to the custom of the country, ought not to be compelled to appear in public, the petition may be presented by a duly authorized agent who may be able to answer all material questions relating to the application, and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.
Certain petitions may be presented by agent.

401. If the petition be not framed or presented in the manner laid down in sections 399 and 400, the Court shall reject it.
Rejection of petition.

402. If the petition be in form and duly presented, the presiding officer of the Court shall himself proceed to examine the petitioner, or his agent when the petitioner is allowed to appear by agent, regarding the merits of the claim and the property of the petitioner.
Examination of petitioner.

When the petition is presented by an agent, the Court may, if it thinks proper, order that the petitioner be examined by a Commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.
If presented by agent, Court may order petitioner to be examined by Commission.

403. If it appear to the Court upon such examination

(a) that the defendant, or the subject-matter of the suit, is not within the local limits of the jurisdiction of the Court, or

(b) that the right to sue is barred by lapse of time, or

that the allegations of the petitioner do not show a right to sue, or

(b) that he has failed to show that he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint, or

(c) that he has recently disposed of any property fraudulently or with a view to obtain the benefit of this Chapter,

the Court shall refuse to allow him to sue as a pauper.

404. If upon such examination the Court sees no reason to refuse the application on any of the grounds stated in the last preceding section, it shall fix a day, of which at least ten days' previous notice shall be given to the opposite party, for receiving such evidence as the petitioner may adduce in proof of his being a pauper, and for hearing any evidence which the opposite party may bring forward in disproof of his pauperism.

405. On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the petition and of the evidence (if any) taken by the Court as herein provided, the petitioner is or is not subject to any of the prohibitions specified in section 403.

The Court shall then either allow or refuse to allow the petitioner to sue as a pauper.

406. Either party may, on application to the Court made in sufficient time before the day fixed for the hearing of the case, obtain a summons to any person to attend either to give evidence or to produce a document.

407. Previously to passing a final order in the case, the Court may, if it thinks fit, cause a local investigation to be made in the manner laid down in sections 386 to 389 (both inclusive) regarding the property of the petitioner or regarding the amount or value of any property claimed.

408. If the application of the petitioner be granted, it shall be numbered and registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under chapter V, except that the plaintiff shall not be liable to any fee chargeable under the Court Fees Act, 1870, in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

Nothing in this section exempts the petitioner from—

- (a) payment of the expenses of service of process,
- (b) payment of the travelling and other expenses of witnesses,
- (c) payment of the duty and penalty (if any) payable under the General Stamp Act on unstamped or insufficiently stamped instruments produced in Court by or on behalf of the petitioner, or

(d) giving security for costs, if he resides out of British India.

409. If the plaintiff succeeds in the suit, the Court may award to him such costs as it thinks fit, and shall calculate the amount of fees chargeable under the Court Fees Act, 1870, which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

The costs of an application for permission to sue as a pauper and of an enquiry into pauperism are costs in the suit.

If the plaintiff fails in the suit, the Court may order him to pay costs to the defendant; and if it find that the suit was frivolous or vexatious it may also punish him with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

410. Refusal to allow the petitioner to sue as a pauper shall be a bar to any subsequent application of the like nature in respect of the same right to sue; but the plaintiff shall be at liberty to institute a suit in the ordinary manner in respect of such right.

411. The Court may, on motion by the defendant, of which he shall have given one week's notice in writing to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, which would be held invalid on the ground of its breeding litigation or being otherwise against public policy.

412. The provisions of Chapters XIV and XV relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to witnesses and other persons required to give evidence or to produce documents under the provisions of this Chapter.

CHAPTER XXVI.

SUITS BY OR AGAINST GOVERNMENT OR GOVERNMENT SERVANTS.

413. Suits by or against the Government shall be brought by or against (as the case may be) the Secretary of State for India in Council.

414. Persons being *ex officio* or otherwise authorized to act for Government in respect of any judicial proceeding, shall be deemed to be the recognized agents by whom

appearances, acts and applications under this Code may be made or done on behalf of Government.

415. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council," and the plaint may be subscribed and verified by the Government Pleader of the Court in which the suit is brought, or, where there is no such Pleader, by the Pleader by whom the plaint is filed.

416. The person appointed to act as pleader on the part of Government in any Court, shall be accounted the agent of the Government for the purpose of receiving processes against the Government or the Secretary of State for India, issuing out of the Court in which such person may be the pleader of Government.

417. The person appointed to act as pleader on the part of Government in any District Court shall, for the purpose of the last preceding section, be considered the pleader of Government in any Court in such district in which no person has been specially appointed pleader on the part of Government in such Court.

418. Processes issued by a Court to the Government pleader of another Court may be forwarded to him by post.

419. If the suit be against the Secretary of State for India the summons shall be served on the Government Pleader of the Court in which the suit is instituted or on any other person appointed to receive process on behalf of the Government.

420. The Court, in fixing the day for the Secretary of State for India in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Secretary of State for India or the Government, and may extend the time at its discretion on application being made for such extension.

The Court may also in any case in which the Government Pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

421. If the defendant be in the service of Government, the Court may send a copy of the summons to the head officer of the office in which the defendant is employed, for the purpose of being served on him, if it shall appear to the Court that the summons may be most conveniently so served.

422. If the suit be against an officer of Government for an act which the plaintiff alleges to have been done by such officer in his official capacity,

the summons shall be served upon such officer in the manner provided in section 421.

423. If the officer on receiving the summons considers it proper to make reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time in the summons as may be necessary to enable him to make such reference and to receive order thereon through the proper channel;

and the Court upon such application may extend the time for so long as appears to be requisite.

424. If the Government undertake the defence of a suit of the nature referred to in section 422, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

425. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest before judgment.

426. If in a suit against an officer of the Government the Court requires the personal appearance of the defendant, and the defendant satisfies the Court that he cannot absent himself from his duty without detriment to the public service, the Court shall exempt him from appearing in person, but he shall be liable to be examined in any way in which an absent witness may be examined.

427. When the decree is against Government or against an officer acting on behalf of Government, and the officer against whom execution is applied for neglects or refuses to satisfy the decree, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any decree mentioned in this section unless it remains unsatisfied for the period of three months computed from the date on which the report of the case reaches the Local Government.

CHAPTER XXVII.

SUITS BY OR AGAINST NATIVE AND FOREIGN RULERS.

428. Persons specially appointed by an order of the Governor General in Council or the Local Government at the request of any Sovereign Prince or independent Chief, whether residing within or without British India, to prosecute or defend a suit on his behalf shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

CHAPTER XXVIII.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

429. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the complaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

430. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee,

the summons may be served by leaving the same at the registered office (if any) of the Corporation or Company, or sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or by giving it to any director, secretary, or other principal officer of the Corporation or Company,

and the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

CHAPTER XXIX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

431. In all suits concerning property vested in a trustee, executor or administrator, the trustee, executor or administrator shall represent the persons beneficially interested in such property; and it shall not ordinarily be necessary to make such persons parties to the suit. But the Court may, if it think fit, order them or any of them to be made such parties.

432. Where there are several executors or administrators, they must all be made parties to a suit against one or more of them:

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

433. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXX.

SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

434. Every suit on behalf of a minor, shall be instituted in the name of an adult person, who in such suit shall be called the next friend of the minor and may be ordered to pay any costs in the suit as if he were the plaintiff.

435. If a complaint be filed on behalf of a minor, without a next friend, the defendant may apply by summons to have the complaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

436. Where the defendant to a suit, or respondent to any application, is a minor, the Court shall appoint a proper person to be guardian *ad litem* for such minor to put in the defence for such minor, and generally to act on such minor's behalf in the conduct and management of the case.

437. Every application to the Court on behalf of a minor shall be made by his next friend, or his guardian *ad litem*.

438. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian *ad litem*, as the case may be, may be discharged, with costs to be paid by the pleader of the party at whose instance such order was obtained, if such pleader knew, or might reasonably have known, the fact of such minority.

439. Any person, being *sui juris*, and not being a married woman, may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant or respondent.

440. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant or respondent whose interest is adverse to that of such minor, as to make it unlikely that the interest of such minor will be properly protected by him; or if he does not do his duty, or, pending the suit or application, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of such minor or by a defendant or respondent for his removal, and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

441. Unless otherwise ordered by the Court or a Judge, a next friend shall not retire at his own request without first procuring a fit and proper person to be put in his place, and giving security for the costs already incurred.

442. The application for the appointment of a new next friend shall be by summons, and shall be supported by affidavit, showing the fitness of the person proposed, and also, that he has no interest adverse to the minor.

443. On the death or removal, as aforesaid, of a next friend, further proceedings shall be stayed until the appointment of a next friend in his place.

444. Whoever seeks to be appointed a new next friend may apply through the minor's pleader by summons, for the appointment of a new next friend, whose fitness must be verified by affidavit.

If the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person may apply, by summons, to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

445. On the appointment of a new next friend his name as such shall be inserted in the proceedings.

446. Before the name of any person can be used as the next friend of a minor, he must sign a written authority to the pleader for that purpose, which authority must be filed in Court.

447. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the suit or application.

If he elects to proceed with it, he shall obtain an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus:—"A. B., late a minor by C. D., his next friend, but now of full age."

If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, obtain an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent or which may have been paid by his next friend.

In either case the application may be made by petition *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

448. A minor co-plaintiff or co-applicant, on coming of age, and desiring to repudiate the suit or application, must apply to have his name struck out as co-plaintiff or co-applicant, or for permission to withdraw from the application.

The application shall be by summons to the next friend, as well as to the defendant or respondent; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit or matter, shall be paid by such persons as the Court directs.

449. If any minor on attaining majority can prove to the satisfaction of the Court that a suit or proceeding instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff or sole applicant, apply to have the suit or proceeding dismissed, or, if a co-plaintiff or co-applicant, apply to have his name struck out as such co-plaintiff or co-applicant.

The application shall be by summons to all the parties concerned: and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties of the application, and of all or any of the costs of all parties of any proceeding theretofore had in the suit or matter.

450. A minor, on attaining majority, will not be allowed to appear by another pleader, unless he has obtained an order to change the pleader.

451. An order for the appointment of a guardian *ad litem* may be obtained upon petition in the name of the minor. The petition must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit or application, adverse to that of the minor, and that he is a fit and proper person to be appointed.

452. A co-defendant or co-respondent, if *ex juris*, may be appointed guardian *ad litem*, if he has no adverse interest; but neither a plaintiff, nor a party applicant, nor a married woman, can be appointed.

453. If no application for the appointment of a guardian *ad litem* be made on behalf of a defendant or plaintiff or applicant, respondent to any application who is a minor, the plaintiff or applicant may, if default be made by the defendant or respondent in appearing to the suit, or answering the application, apply that a guardian *ad litem* may be appointed, and the Judge, on being satisfied that such defendant or respondent is a minor so that he is unable of himself to protect his interests in the suit or application, may assign a guardian to such defendant or respondent, by whom he may appear to and defend such suit, or answer such application.

454. No such order shall be made, unless it appears to the Judge, on the hearing of the application for the appointment of a guardian *ad litem*, (a) that a copy of the summons was duly served, and (b) that notice of such application was, after the time within which the defendant or respondent was required to appear or answer, and at least four clear days before the hearing of such application, served upon the person with whom or under whose care such defendant or respondent was at the time of serving the summons; and (c) in case of such defendant or respondent being a minor not residing with, or being under the care of, his father or guardian, that notice of such application was also served upon the father or guardian, if any, of such minor, unless the Court, at the time of hearing the application, thinks fit to dispense with such last-mentioned service.

455. If the guardian *ad litem* dies pending a suit, or pending an application made against a minor not a party to a suit, a new guardian must be appointed in his place, in the same manner as the original guardian, and upon similar evidence.

456. If the guardian *ad litem* of a minor defendant or respondent does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

457. When the enforcement of a decree is applied for against the heir or representative, being a minor of a deceased party, a guardian *ad litem* of such minor must be appointed, and a notice, similar to that issued under section 226, must be served on such guardian.

458. Where any decree is made against a minor defendant, no day to show cause shall be given, unless the Court otherwise orders.

459. Where a decree or order, not solely for costs of suit, has been made by the Court, under which any sum of money, or any other thing, is payable to or receivable by a minor, every such sum of money, or thing, shall, unless the Court otherwise orders, be paid or delivered to the Receiver or other officer of the Court, whose duty it is to receive or realize, or obtain possession of and hold, the same on behalf of such minor.

460. After the appointment of next friend or guardian *ad litem*, no sum of money, or other thing, shall be received or taken by him at any time on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to the satisfaction of the Court, that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

461. No such next friend or guardian *ad litem* shall enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian without the leave of the Court, to be applied for on petition.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

462. The provisions contained in sections 434 to 461 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind not found so by inquisition,

and on the application for the appointment of a guardian *ad litem*, it must also be proved by the affidavit of a medical man, or other person qualified to give the evidence, that the person who is said to be of unsound mind is actually in that condition, and incapable of taking care of his own affairs, or of understanding the purport or nature of the suit or application, or of defending or answering the same.

CHAPTER XXXI.

SUITS BY INFIRM PERSONS AND WOMEN.

463. Persons who by reason of bodily infirmity are unable without risk or serious inconvenience to attend the Court in person, and women exempt under section 692 from appearing in Court, may give special powers-of-attorney to other persons, authorizing them to appear, sue or defend in a particular suit, and persons so authorized shall be deemed to be, for the purposes of this Code, recognised agents of their principals.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

464. When any officer or soldier in the military service of the Government is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of his commanding officer or of the next subordinate officer, if the party be himself the commanding officer. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression 'commanding officer' means the officer in actual command for the time being of any Regiment, Corps, Detachment or Depot, to which the officer or soldier belongs.

465. Any person authorized by an officer or soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

466. Processes served upon any person authorized by an officer or soldier, as in section 464, or upon any pleader appointed as aforesaid by such person to act for or on behalf of such officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on a pleader appointed by him.

467. If the defendant be an officer or soldier in the military service of the Government, the Court shall send a copy of the summons to the commanding officer of such officer or soldier for the purpose of being served on him. If the defendant be himself the commanding officer, such copy shall be sent for the same purpose to the next subordinate officer.

The officer to whom the summons is transmitted, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the summons cannot be served upon the person to whom it is addressed, it shall be returned to the Court by which it was transmitted, with information of the cause which has prevented the service.

In such case the Court shall take such other means of serving the summons as it thinks fit.

468. If, in the execution of a decree, process is to be executed within the limits of a Cantonment, Garrison, Military Station or Military Bazar, the officer entrusted with the execution of such process shall carry the same to the Commanding Officer.

The Commanding Officer, upon such process being produced to him, shall back the same with his signature, and, in the case of a warrant of arrest, shall cause the person named in the warrant to be arrested if within the limits of his command, and delivered, according to the exigency of the warrant, to the officer charged with the execution thereof.

CHAPTER XXXIII.

INTERPLEADER.

469. When two or more persons claim adversely to one another the same payment or property from another person whose only interest therein is that of a mere stakeholder and who only seeks to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of having it decided to whom the thing claimed belongs and of obtaining indemnity for himself.

Illustration.

A obtains a decree against B. C, an officer of the Court, takes goods which he has reason to suppose are B's, in satisfaction of the decree. D alleges that the goods are his and threatens to sue C for their recovery. A on his part contends that the goods ought to be sold to satisfy his decree. C may institute an interpleader suit against A and D.

EXPLANATION.—If any suit is pending in which the rights of all parties can properly be decided, there is no occasion for an interpleader suit.

470. In every such suit the plaintiff must, in addition to the other statements necessary for plaints, state—

- (a.) That the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;
- (b.) The claims made by the defendants severally;
- (c.) That there is no collusion between the plaintiff and any of the defendants.

471. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Procedure at first hearing. 472. At the first hearing the Court may

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit:
- or if it thinks that justice or convenience require
- (b) retain all parties until the final disposal of the suit:
- and, if it finds that the admissions of the parties or other evidence enable it,
- (c) adjudicate the title to the thing claimed: or else it may
- (d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court.

473. Nothing in this chapter shall be taken to enable agents to sue their principals or tenants to sue their landlords for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot maintain an interpleader suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may maintain an interpleader suit against A and C.

474. When the suit is properly instituted, the Court shall provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

475. If any of the defendants in an interpleader suit is actually suing the stakeholder being the plaintiff in that suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed that a decree has been made in the interpleader suit in favour of the stakeholder, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in the suit so stayed; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit.

PART IV.

OF PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST BEFORE JUDGMENT.

476. If at any stage of a suit the plaintiff satisfies the Court that the defendant, with intent to avoid or delay the plaintiff,

or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

- (a) has absconded or left the jurisdiction of the Court, or
- (b) is about to abscond or to leave the jurisdiction of the Court, or
- (c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

477. If the Court, after examining the applicant, and making such further investigation as it may consider necessary, is satisfied that the defendant, with

Order to bring up defendant to show cause why he should not give security.

any such intent as aforesaid,

- (a) has absconded or left the jurisdiction of the Court, or
- (b) is about to abscond or to leave the jurisdiction of the Court, or
- (c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

(d) is about to leave British India under the circumstances last aforesaid,

the Court may issue an order for bringing the defendant before the Court to show cause why he should not give security for his appearance.

478. If the defendant fail to show such cause, the Court shall order him, either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

479. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

480. If the defendant fail to comply with an order under either of the two last preceding sections, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree.

Compensation where defendant arrested or suit instituted on insufficient grounds.

481. If it appear to the Court that the arrest of the defendant was applied for on insufficient grounds, or if, after such arrest, the suit of the plaintiff is dismissed, or judgment is given against him by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for any injury or loss which he has sustained by reason of such arrest:

Provided that the Court shall not award a larger amount of compensation under this section than it is competent to such Court to decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest.

CHAPTER XXXV.

OF ATTACHMENT BEFORE JUDGMENT.

482. If at any stage of any suit the plaintiff satisfies the Court that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

Application before judgment for security from defendant to fulfil decree, and in default, for an attachment of his property.

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to fulfil any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any such property shall be attached until the further order of the Court.

483. The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof; and the plaintiff shall, at the time of making the application, declare that the defendant is about to dispose of or remove his property with such intent as aforesaid.

The declaration shall be in writing, and shall be verified in the manner hereinbefore provided for the verification of plaints:

Provided that the Court may dispense with the specification and valuation required by this section, if satisfied of the plaintiff's inability to furnish the same.

484. If the Court, after examining the applicant, and making any further investigation which it may consider necessary, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum

Court may call on defendant to furnish security or show cause.

as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the provisional attachment of the whole or any portion of the property specified in the application.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to fulfil any decree which may be passed in the suit, shall be attached.

486. If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been ordered to be attached, the Court shall order the attachment to be withdrawn.

487. The attachment shall be made, according to the nature of the property to be attached, in the manner hereinbefore provided for the attachment of property in execution of a decree for money.

488. If any claim be preferred to the property attached before judgment, such claims shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

489. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment.

490. If it appear to the Court that the attachment was obtained on insufficient grounds, or if, after the attachment, the suit of the plaintiff is dismissed or judgment is given against him by default or otherwise,

and it appears to the Court that there was no probable ground for instituting the suit, the Court which disposes of the case may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment:

Provided that the Court shall not award a larger amount under this section than it is competent to such Court to decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such attachment.

491. Attachment before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

492. If it appear to the Court by which the property has been ordered to be attached before judgment, that there is reasonable ground for supposing that the decree in satisfaction of which the sale of the property is applied for under the provisions of section 485 was obtained by fraud or other improper means, the Court may refuse to allow the property to be sold in execution if the decree be a decree of that Court, or if it be a decree of another Court may stay the proceedings for a reasonable time to enable the person on whose application the property was ordered to be attached to adopt proceedings to set aside the decree.

493. When land paying revenue to Government, or a tenure liable to summary sale, forms the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and a sale is in consequence ordered to take place, the party to the suit not in possession shall, upon payment of the revenue or rent due previously to the sale (with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defendant the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders in any adjustment of accounts which may be directed in the decree passed in the suit.

CHAPTER XXXVI.

OF TEMPORARY INJUNCTIONS.

494. If it be shown to the satisfaction of the Court that any property is in dispute in a suit in which a danger of being wasted, damaged or alienated by any party to the suit, the Court may grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging or alienation of the property as the Court thinks fit.

495. Where during the pendency of a suit it is shown to the satisfaction of the Court that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, the Court may grant a temporary injunction to restrain such removal or disposition.

496. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any

time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committing of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

Such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

In case of disobedience, an injunction granted under this section or section 494 or 495 may be enforced by the imprisonment of the defendant or the attachment of his movable property or both.

497. The Court may in all cases, and shall in all cases except those of great urgency, before granting an injunction, direct notice to be given to opposite party.

498. An injunction directed to a corporation is binding not only on the corporation itself but also on all members and officers of the corporation whose personal action it seeks to restrain.

499. Any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

500. If it appears to the Court that the injunction was applied for on insufficient grounds, or

if, after the issue of the injunction, the claim of the plaintiff is dismissed or judgment is given against him by default or otherwise,

and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury occasioned to him by the issue of the injunction:

Provided that the Court shall not award a larger amount under this section than it is competent to such Court to decree in a suit for compensation.

An award of compensation under this section shall bar any suit for damages in respect of the issue of the injunction.

CHAPTER XXXVII.

APPOINTMENT OF RECEIVERS AND MANAGERS, AND DEPOSIT IN COURT.

501. Whenever it appears to the Court to be necessary for the preservation or the better management or custody of any immovable property which is in dispute in a suit in such Court, the Court may

(a) appoint a Receiver or Manager of such property, on such terms as to security or otherwise as to the Court seems fit; and may, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof,

(c) commit the same to the custody of such Receiver or Manager,

(d) grant to such Receiver or Manager such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the management, protection, preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as the owner himself has, or such of those powers as the Court thinks fit.

502. If the property be land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be Receiver or Manager of such land, unless the Government by any general order prohibits the appointment of Collectors for such purpose, or in any particular case prohibits the appointment of the Collector to be such Receiver or Manager.

503. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court.

PART V.

OF SPECIAL PROCEEDINGS.

CHAPTER XXXVIII.

REFERENCE TO ARBITRATION.

504. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time during the litigation, apply in writing to the Court for an order of reference.

505. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

506. If the parties cannot agree with respect to the nomination of the arbitrator, or if the person whom they nominate refuses to accept the arbitration, and the parties are desirous that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

507. The Court shall, by an order, refer to the arbitrator the matter in difference which he may be required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit unless the reference be fruitless, in which case the

Court may issue an order superseding the arbitration and restoring the suit to the file of the Court.

508. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators.

When reference is to two or more, order to provide for difference of opinion.

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

509. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, the Court, if any of the parties so desire, may appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting or becoming incapable to act.

Death, incapacity, &c., of arbitrators or umpire.

510. Where the arbitrators are empowered by the terms of the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, the Court, upon the application of the party having served such notice as aforesaid, and upon proof to its satisfaction of such notice having been served, may appoint an umpire.

Appointment of umpire by Court.

511. An arbitrator or umpire appointed under either of the last two preceding sections shall have the like powers to act in the reference, as if his name had been inserted in the order of reference.

Power of arbitrator or umpire appointed under section 509 or 510.

512. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire to examine, as the Court is authorized to issue in suits tried before it.

Summoning witnesses.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or being guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Punishment for default, &c.

513. If from the want of the necessary evidence or information, or from any other cause, the arbitrator does not complete the award within the period specified in the order, the Court may, if it think fit, grant a further time, and from time to time enlarge the period for the delivery of the award.

Extension of time for making award.

514. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators.

When umpire may arbitrate in lieu of arbitrators.

- (a) if they have allowed the appointed time to expire without making an award, or
- (b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

515. When an award in a suit has been made, the person or persons who made it shall sign it and shall file it in Court, together with any documents which have been filed; and notice of the filing of the award shall be given to the parties.

Award to be signed and filed.

516. Upon any reference by an order of Court, the arbitrator or umpire may, if he thinks fit and unless the Court otherwise directs, state his award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

Arbitrator or umpire may state special case.

517. The Court may, on the application of either of the parties, modify or correct an award,

Court may, on application, modify or correct award in certain cases.

- (a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

518. The Court may also, on the application of either of the parties or of the person or persons making the award, make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Order as to costs of arbitration.

519. In any of the following cases the Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit, that is to say:—

When award or matter referred to arbitration may be remitted.

- (a) If the award has left undetermined any of the matters referred to arbitration, or if it determine any matter not referred to arbitration;
- (b) If the award is so indefinite as to be incapable of execution;
- (c) If an objection to the legality of the award is apparent upon the face of it.

520. An award remitted under section 519 becomes null and void on the refusal of the arbitrators or umpire to reconsider it.

Grounds for setting aside award.

But no award shall be liable to be set aside except on one of the following grounds (namely)—

- (a) corruption or misconduct of the arbitrator or umpire;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;
And no award shall be valid unless made within the period allowed by the Court:

521. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to give judgment according to the award, or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case:

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees.

522. When any persons by an instrument in writing agree that any difference between them or any of them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in such Court.

523. The application shall be in writing and shall be numbered and stamped, numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

524. On such application being made, the Court shall direct notice thereof to be given to any of the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

525. If no sufficient cause be shown against the filing of the agreement, the agreement shall be filed and an order of reference to arbitration shall be made thereon.

Explanation.—The fact that one of the parties to the agreement has revoked his consent to refer is not a sufficient cause within the meaning of this section.

526. The foregoing provisions of this chapter, so far as they are not inconsistent with the terms of any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under the last preceding section, and to the award of arbitration and to the enforcement of the decree founded thereupon.

527. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of

the lowest grade having jurisdiction over the whole matter to which the award relates, that the award be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

528. If no sufficient cause be shown against the award, the award shall be filed and may be enforced as a decree upon an award made under the provisions of this Chapter.

CHAPTER XXXIX.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

529. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing—

(a) that such question be stated in the form of a special case for the opinion of the Court; or

(b) that upon the finding of the Court in the affirmative or negative of such question, a sum of money fixed by the parties or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(c) that some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(d) that one or more of the parties shall do or perform, or refrain from doing or performing some other particular act specified in the agreement.

530. If the agreement is for the delivery of any property, or for the doing or performing, or the refraining from doing or performing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

531. The agreement may be filed in the Court of the lowest grade having jurisdiction in the matter to which it relates, and, when so filed, shall be numbered and registered as a suit between one or more of the parties interested, or claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

532. After the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained in the agreement.

533. The case shall be set down for hearing as a suit instituted under chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties or taking such evidence as it thinks fit, (a) that the agreement was duly executed by them, and

(b) that they have a *bona fide* interest in the question of fact or law stated therein, and

(c) that the same is fit to be tried, it shall proceed to try the same and deliver judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

CHAPTER XL.

OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

534. All suits upon bills of exchange, hundis or promissory notes commenced in any High Court within six months after the same have become due and payable, may, in case the plaintiff desires to proceed under this chapter, be commenced as follows (namely)—

(a) the plaint shall be in the form prescribed by this Code;

(b) the summons shall be in the form contained in the fourth schedule hereto annexed, No. 168, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear to or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

535. The High Court shall, upon application within the period of seven days from the service of such summons, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons or upon affidavits satisfactory to the Court, which disclose a defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

536. After decree, the High Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

537. In any proceedings under this chapter the High Court may order the bill or note on which the suit is founded to be forthwith deposited with an

officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

538. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

539. The provisions of this Code and all rules made under or by virtue of this Code shall, so far as the same are or may be made applicable, extend and apply to all proceedings under this chapter, except so far as such proceedings are regulated by this chapter.

540.* The Local Government may, by notification in the official Gazette,

(a) direct that all or any part of the provisions of this chapter shall, *mutatis mutandis*, apply to all or any of the Courts in the territories subject to such Government other than a High Court,

(b) direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and

(c) make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

Any such notification may be in like manner from time to time altered or annulled.

PART VI. OF APPEALS.

CHAPTER XLI.

BAR OF APPEALS NOT EXPRESSLY PERMITTED.

541. Except as provided by this Code or by any other enactment for the time being in force, no appeal shall lie from any decree or order.

Illustration.

No appeal shall lie from a decree or order made in any suit under Act No. XIV of 1859, section 15.

CHAPTER XLII.

OF APPEALS FROM ORIGINAL DECREES.

542. Unless when otherwise expressly provided in this Code or by any other law for the time being in force, an appeal shall lie from the decrees or from any part of the decrees of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts:

Provided that no appeal shall be admitted on a question solely relating to costs, except under the circumstances mentioned in section 201.

543. If the appeal lie to the High Court, it shall be heard and determined by a Court consisting of two or more Judges of that Court.

HOW APPEALS ARE TO BE PREPARED.

544. The appeal shall be made in the form of a memorandum presented in the Appellate Court within the period prescribed in this behalf by the Indian Limitation Act.

545. The memorandum of appeal shall be accompanied by a copy of the decree appealed against.

546. The memorandum of appeal shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

547. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of meeting the appellant's case on that ground.

548. If the appeal be to the High Court, but not from a decree made by that Court in the exercise of its ordinary or extraordinary original civil jurisdiction, the memorandum of appeal, instead of stating the grounds of objection to the decree appealed against, may state only the dissatisfaction of the party preferring the appeal with the decree and his intention to file his grounds of objection subsequently.

In such case the grounds of objection shall be filed within one month from the date of the receipt in the High Court of the record of

the suit in which the appeal is made, to be certified by an officer of the High Court at the time of the receipt of the record, or within such shorter period as the High Court by a general rule published in the local official Gazette may from time to time appoint.

549. The High Court may, for sufficient reason, extend the time allowed in the last preceding section for filing the grounds of objection.

550. The grounds of objection, when filed separately from the memorandum of appeal, shall be written on a stamp-paper of the value of four rupees. If the grounds of objection cannot be contained in a single sheet of stamp-paper, every additional sheet used shall bear a stamp of one rupee.

551. The provisions of sections 545, 546 and 547, shall apply to the grounds of objection when filed separately from the memorandum of appeal.

552. If the memorandum of appeal be not presented within the prescribed period and no sufficient cause be shown for the delay, the appeal shall be disallowed.

553. If the grounds of objection, when allowed to be filed separately, be not filed within the prescribed period or within the further time to which such period may have been extended by the Court, the appeal shall be struck off the file.

554. If the memorandum of appeal or the grounds of objection be not drawn up in the manner hereinbefore prescribed, or do not bear the proper stamp, such memorandum or grounds may be rejected or returned to the appellant for the purpose of being amended within a time to be fixed by the Court.

When the Court rejects under this section any memorandum or grounds of objection, it shall record the reasons for such rejection.

555. If there be more plaintiffs or more defendants than one in a suit, and the decree appealed against proceed on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants as the case may be.

Illustrations.

(a). A sues B and C on a promissory note. The defendants plead payment. The Court decrees in favour of A. B alone appeals. The Appellate Court, holding that payment has been made, may reverse the decree in favour of both B and C.

(b). A sues B and C on a promissory note. B pleads payment and C pleads the Limitation Act. The Court overrules both pleas and decrees in favour of A. B alone appeals. The Appellate Court may be of opinion that payment has been made, but cannot, on B's appeal, reverse the decree as regards C.

556. If it appear to the Court at the hearing of an appeal that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, may be affected by the result of the appeal, the Court may adjourn the hearing of the appeal to a future day to be fixed by the Court, and direct that such person shall be made a respondent in the appeal.

OF STATING AND EXECUTING DECREES UNDER APPEAL.

557. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may, for sufficient cause shown, order the execution to be stayed.

Such order shall not be made in any case unless the Court is satisfied—

(a) that irreparable injury may result to the party applying for stay of execution unless the order is made; and

(5) that the application has been made without unreasonable delay.

If the Court orders execution to be stayed, it may impose upon the appellant whatever terms it thinks fit as to giving security for the performance of its decree or otherwise.

558. If an application be made for the execution of a decree which is open to appeal, before the time allowed for appeal has expired, and the Court which passed the decree has not received intimation of an appeal having been preferred therefrom, the Court may, if sufficient cause be shown, stay the execution.

Before making an order to stay execution, the Court shall require security to be given by the party against whom the decree was passed for the due performance of the decree or order of the Appellate Court.

559. If an order is made for the execution of a decree against which an appeal has been preferred, the Court which passed the decree may, on sufficient cause being shewn by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or of the value of such property, and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

560. No such security as is mentioned in the last three preceding sections shall be required from Government or from any officer of the Government sued as such.

OF PROCEDURE IN APPEAL FROM DECREES.

561. When a memorandum of appeal is presented within the time allowed, the Appellate Court or the proper officer of that Court, if the memorandum be duly stamped and in the prescribed form, shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Such book shall be called the Register of Appeals.

562. The Appellate Court may, at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs either of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immovable property within British India independent of the property to which the appeal relates.

If such security be not furnished at the time of presenting the memorandum of appeal or within such time as the Court orders, the Court shall reject the appeal.

563. When the memorandum of appeal is registered, or when the grounds of objection are filed, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court to which such notice is sent shall, upon the receipt thereof, transmit with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

564. Either party may make an application in writing to the Court against whose decree the appeal is made, specifying any papers of which he requires copies to be made and deposited in such Court, and copies of such papers shall be prepared at the expense of the applicant, and shall be deposited accordingly.

565. A day shall be fixed by the Appellate Court for the hearing of the appeal.

The day shall be so fixed, with reference to the place of residence of the respondent and the time necessary for the service of the notice of appeal, as to allow the respondent a sufficient time to enable him to appear and answer the appeal on such day.

566. Notice of the day fixed for hearing the appeal shall be stuck up in the Appellate Court, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or his pleader in the manner provided in chapter VI for the service of a summons to a defendant to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause notice to be served on the respondent or his pleader under the rules above referred to, whenever it appears convenient to do so.

567. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the appeal will be heard *ex parte*.

568. If on the day fixed for hearing the appeal or any other day subsequent thereto to which the hearing of the appeal may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

569. If on the day fixed for hearing the appeal it be found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the time allowed, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

570. If an appeal be dismissed for default, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved to the satisfaction of the Court that the appellant was prevented by any sufficient cause from attending when the appeal was called on for hearing, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose on the appellant.

571. When an appeal is heard *ex parte* in the absence of the respondent and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if it be proved to the satisfaction of the Court that the respondent was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose on the respondent.

572. The respondent, though he may not have appealed against any part of the decree, may, upon the hearing, take any objection to the decree which he could have taken by way of appeal, provided he gives the appellant seven days' notice in writing of such objection.

Such notice shall be in the form of a memorandum, and shall be on the stamp-paper prescribed for petitions to the Court; and the provisions of sections 545, 546 and 547, so far as they relate to the form and contents of the memorandum of appeal, shall be applicable to such notice.

Explanation.—A respondent cannot by such notice raise questions between himself and any other respondent or defendant to the suit, but can only raise questions between himself and the appellant.

573. If without going into the merits, the Court against whose decree the appeal is made disposes of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the due determination of the rights of the parties, and the decree upon such preliminary point is reversed, the Appellate Court may, if it thinks fit, remand the case, together with a copy of the decree or order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register, and

(a) to proceed to investigate the suit on the whole merits, and pass a decree thereon; or

(b) to try a particular issue; or

(c) to take certain specified evidence.

574. When a case is remanded with directions to take certain specified evidence, the Court to which the case is remanded shall not take any other evidence in the case.

575. When no preliminary point has been wrongly decided and no evidence has been excluded by the Court against whose decree the appeal is made, but the Appellate Court considers the issues to have been defective or insufficient, the Appellate Court shall not remand the case, but shall re-settle the issues and determine them itself.

576. The Appellate Court shall not remand a case for a second decision, except as provided in section 573.

577. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court shall finally determine the case notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

578. If the Court against whose decree the appeal is made has omitted to raise or try any issue or to determine any question of fact which appears to the Appellate Court essential to the right determination of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and (subject to the rules contained in the Indian Evidence Act, 1872,) prescribe the manner in which the additional evidence required should be taken and the points to which it should be confined,

and such Court shall proceed to try such issue, and shall return to the Appellate Court its finding thereon together with the evidence.

579. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, file a memorandum of objections to the finding.

Such memorandum shall be on such stamp-paper and subject to such provisions as are prescribed for memorandums by sections 548 and 550.

580. After the expiration of the period fixed for filing such memorandum, the Appellate Court shall proceed to determine the appeal.

581. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the reason for the admission shall be recorded on the proceedings of the Court.

582. Whenever additional evidence is permitted to be received, the Appellate Court may either take such evidence, or require

the Court against whose decree the appeal is made or any other Court, or may empower any person, to take such evidence, and to send it when taken to the Appellate Court.

Subject to the rules contained in the Indian Evidence Act, 1872, the Appellate Court may also prescribe the manner in which such additional evidence shall be taken.

583. In all cases where additional evidence is permitted to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

OF THE JUDGMENT IN APPEAL.

584. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether held in appeal or in the Court against whose decree the appeal is made, to which a reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

585. The judgment shall be written in the English language; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue.

586. When the language in which the judgment is written is not the language in use in proceedings before the Court, the judgment shall, if any party so require, be translated into such language, and the translation shall be signed by the Judge.

587. The judgment of the Appellate Court shall state—

- (a) the points for determination;
- (b) the decision thereupon;
- (c) the reasons for the decision; and
- (d) when the decree appealed against is reversed, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be dated and signed by the Judge or by the Judges concurring therein.

588. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

589. When the appeal is heard by two Judges, if there is a difference of opinion upon the evidence, and one Judge concurs as to the facts with the Court which passed the decree appealed against, the appeal shall be determined according to the opinion of such Judge.

If the two Judges differ in opinion upon a point of law, they shall confer together and state the point, and the case shall be re-argued upon that point before one or more of the other Judges, and shall be determined according to the opinion of the majority of the Judges before whom the point is argued; including the Judges who first heard the appeal.

590. When the appeal is heard by more Judges than two, the decision shall be according to the opinion of the majority.

But if their opinions be equally divided, the decree appealed from shall be taken as affirmed.

591. The judgment may be for confirming or reversing or modifying the decree of the Court against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

592. No decree shall be reversed or modified, nor shall any case be remanded in appeal, on account of error or irregularity, any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

OF THE DECREE IN APPEAL.

593. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed by the Judge or Judges who passed it, and shall be sealed with the seal of the Court.

594. Where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

595. Certified copies of the judgment and decree shall be furnished to the parties, in the same manner as provided in section 196 in regard to the decrees of Courts of original jurisdiction.

596. A copy of the decree or other order disposing of the appeal, certified by the Appellate Court or the Registrar or Clerk of the Court, and sealed with the seal of the Court, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of the suit.

597. Unless when otherwise provided in this Code or by any other law, the Appellate Court shall have the same powers in appeals under this chapter in respect to adjournments, granting of time, arrest or attachment before judgment, issue of injunctions, examination of the parties or their pleaders and of witnesses or other persons, issue of commissions, award of interest or mesne profits, separation of misjoined suits, permission to bring fresh suits, or otherwise, as are vested by this Code in Courts of original jurisdiction in respect of suits instituted under chapter V.

The provisions of such chapter and those of chapter XXXVIII, relating to arbitration, unless when otherwise provided, shall apply to appeals under this chapter so far as the same are applicable.

598. When a party in whose favour a decree is passed in an appeal under this chapter is desirous of obtaining execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred, and such Court shall proceed to execute the decree passed in appeal, in the manner and according to the rules hereinbefore provided for the execution of decrees in suits.

CHAPTER XLIII.

OF APPEALS FROM APPELLATE DECREES.

599. Unless when otherwise provided in this Code or by any other law, from all decrees passed in appeal by the subordinate Courts, an appeal shall lie to the High Court on any of the following grounds, (namely)—

- (a) the decision being contrary to some law or usage having the force of law;
- (b) the decision having failed to determine some issue of law or usage having the force of law;
- (c) a substantial error or defect in law in the procedure as prescribed by this Code or any other law, which may have produced error or defect in the decision of the case upon the merits.

600. No appeal from an appellate decree shall lie except on the grounds mentioned in the last preceding section.

601. No appeal shall lie from any appellate decree or order passed by any subordinate Court in any suit of the nature cognizable in Courts of Small Causes, when the debt, damage or demand for which the original suit is instituted, does not exceed the sum of five hundred rupees.

• Every such decree or order shall be final.

Form of memorandum of appeal.

602. The appeal shall be made in such form as is prescribed for appeals under chapter XLII.

603. The memorandum of appeal shall be accompanied by copies of the judgments and decrees of the lower Appellate Court and of the Court of first instance.

604. The memorandum shall be signed by the pleader presenting it, and he shall certify in writing on the back of the memorandum that he has considered the grounds stated for an appeal under this chapter, and that, in his opinion, such of the grounds as he refers to by their numbers are reasonable grounds of appeal.

No pleader shall give such certificate unless he has been generally or specially authorized in that behalf by the High Court.

605. The appellant shall not, without the Court's leave, be heard in support of any ground of objection other than the grounds set forth in the memorandum.

Power to reject memorandum or return it for amendment.

606. If the memorandum of appeal be not in writing, or if it be not drawn up and presented in the manner hereinbefore prescribed, or if it be not signed or have not such certificate duly endorsed upon it as in section 604 mentioned, or

if it do not state any ground on which an appeal will lie under the provisions of section 599, the Court may reject the memorandum or may return it to the party for the purpose of being amended within a time to be fixed by the Court.

The order for rejecting the memorandum or for returning it to the party may be passed by a single Judge of the Court.

607. If the memorandum is in due form, it shall be registered in a book to be kept for the purpose, and the case shall proceed in all other respects under the rules provided in chapter XLII, so far as the same are applicable.

608. No application for an appeal from an appellate decree shall be filed or argued before the High Court by any pleader of the Court who has not signed the certificate required by section 604, or (where such pleader has been changed) a certificate to the same effect, to be written on the back of the application.

609. The decrees passed in appeal under this chapter shall be executed by the Court which made the decree in the suit in which such appeal was preferred, in the manner and under the rules hereinbefore provided for the execution of decrees in suits.